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CRP.No.2759 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2759 of 2019 and
CMP.No.18126 of 2019

1.Lakshmayee @ Chinnalakshmi
2.Solai Gounder
3.Chennimalai
4.Muniappan
5.Thangamani @ Rajammal
6.Minor Selvi
7.Minor Prakash
(Minors 6 & 7 are represented by their
guardian and friend their father
Chinnimalai)

... petitioners

Vs.

1.Muniappan
2.Thangamani

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 15.04.2019 made in IA.No.01 of 2019 in OS.No.141 of 2010 on the file of the District Munsif Court, Sankari by allowing this civil revision petition.

For Petitioners : Mr.Marudhachalamurthy P.



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CRP.No.2759 of 2019

For Respondents

For R1 & 2 : Ms.S.Tamilselvi
for Mr.M.Santhanaraman

ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 15.04.2019 made in IA.No.01 of 2019 in OS.No.141 of 2010 on the file of the District Munsif Court, Sankari, thereby dismissed the application seeking amendment of plaint.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit for declaration and consequential injunction in respect of the suit property. While pending the suit, already the petitioners filed application seeking amendment of plaint. On both occasions, the applications were allowed and the petitioners amended the plaint accordingly. When the suit ripened for trial and posted in the special list, again the petitioners filed petition for the following amendments in the plaint:

1. In the plaint add the following after para 9, “9(a). The recitals of the power of attorney deed dated 23.12.2015 will amply establish that the same was created even prior to the registration of sale deed in favour of 2nd plaintiff. Before ever registering the sale deed in respect of first item of suit property on 24.12.2005 in her favour there is no possibility or probability for the first plaintiff to



CRP.No.2759 of 2019

WEB COPY

execute power of attorney deed in favour of first defendant on 23.12.2005. Further the plaintiffs 3 and 4 after the partition deed dated 30.07.1997 have constructed three thatched houses in the first block of second item of suit property first block bearing Door No.3/101 and also obtained electric service connection SC 786 for the same in the name of the second defendant as Kartha. All plaintiffs are residing in the same along with their families till this date. Except the said three thatched houses in the second item of suit property first block the plaintiffs have no residence. As such said three thatched houses and the service connection SC.786 existed in the second item of suit property even prior to the impugned power of attorney deed dated 04.04.2007 and the sale deed dated 10.12.2009 in favour of second defendant. If the said documents were created in bonafide and lawful manner the said three thatched houses and SC 786 would have been mentioned in the said power of attorney deed dated 04.04.2007 and the sale deed dated 10.12.2009. This vital flaw of non mentioning of thatched houses and service connection will amply establish that the said documents were fraudulent, and not acted upon. Further as per both power of attorney deeds dated 23.12.2005 and 04.04.2007 the first defendant was not vested with possession of suit properties. As such there is no possibility for the first defendant to hand over possession of suit properties to the second defendant as per the sale deed dated 10.12.2009. Till today the plaintiffs are residing in the said three thatched houses and paying house tax and electricity charges. Hence the impugned sale deed in favour of the second defendant dated 10.12.2009 without



CRP.No.2759 of 2019

possession is not valid in eye of law and the second defendant can not claim any right or title over the suit properties on the basis of the same.

2. In the plaint description of property 2nd item, first block line – 5 after the word, “ வீடுகள் add “இதற்கான பழைய கதவு எண்.3/101, புதிய கதவு எண்கள். 3/101, 3/101C1, 3/101C2.”

3. In fact, already the petitioners had sought for amendment to amend the service connection number and other description in the suit property. Again, now the petitioners have sought for amendment in order to include the house in the first block of the second item of the suit schedule property and to include the averments in respect of the power of attorney dated 23.12.2015. In fact, the petitioners had knowledge about the power of attorney and they had categorically stated about the power of attorney. Even then, they failed to make amendment which is presently sought for. That apart, the written statement was filed in the year 13.09.2010 itself. After amendment, the respondents filed additional written statement and thereafter, the petitioners filed reply statement. After a period of nine years from the date of filing the written statement, the petitioners have come forward with the application seeking amendment of plaint for the above amendments. Though it is pre-trial amendment, the present application has been filed only to drag on the suit and nothing else. It is nothing but clear abuse of



CRP.No.2759 of 2019

process of court. As such, the court below rightly dismissed the application and this

Court finds no infirmity or illegality in the order passed by the court below.

4. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

09.02.2023

Speaking/non-speaking

Index : Yes/No

Internet : Yes

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WEB COPY



CRP.No.2759 of 2019

G.K.ILANTHIRAIYAN, J.

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To
The District Munsif Court,
Sankari

CRP.No.2759 of 2019

09.02.2023