



C.R.P.No.887 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2023

DELIVERED ON : .02.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.887 of 2019
and C.M.P.No.5764 of 2019

1. Vamanan
2. Gurunathan

.. Petitioners

Vs.

1. Doss
2. Malliga

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 08.01.2018 in I.A.No.762 of 2017 in O.S.No.2077 of 1997 on the file of the Principal District Munsif Court at Alandur.

For Petitioners : Mr.V.Kannan

For Respondents : Mr.L.Dhamodaran

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 08.01.2018 in I.A.No.762 of 2017 in O.S.No.2077 of 1997, on the file of the Principal District Munsif Court at Alandur,



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thereby dismissing the petition seeking amendment of plaint.

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2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for permanent injunction and delivery of vacant possession of B schedule property.

3. The case of the petitioners is that they are the owners of the A schedule property. In the year 1950, the father of the first petitioner one Etti and father of the second petitioner one Kannan, occupied each 3 cents of land comprised in S.No.510/1A classified as Kalavari Poromboke and constructed their respective huts. In the year 1987, the father of the second petitioner sold out his portion by oral sale. Thereafter, both the petitioners' father were jointly enjoying the A schedule property. All the revenue records were mutated in the name of the father of the first petitioner. In the year 1987, the second respondent, being the relative, requested the second petitioner's father to permit herself and her husband i.e., the first defendant, to occupy the portion of the premises till they get suitable accommodation. The father of the second petitioner, granted oral license to the respondents to stay in the



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portion of A schedule property, on condition that they shall vacate and handover the portion as soon as they get some other accommodation on their own. While being so, in the year 1978, the father of the first petitioner passed away and the respondents requested to extend the time to stay there. However, it would not confer any right or title over the property. Utilizing the said opportunity, the respondents attempted to create revenue records in favour of the first respondent. Therefore, the father of the second petitioner lodged a complaint and prevented them from fabrication of false records. In the year 1992, father of the second petitioner terminated their license and called upon them to vacate the portion of A schedule property. The portion under occupation of the respondents is mentioned more fully in the “B” schedule property. Thereafter, on 13.10.1994, the father of the second petitioner also died and the petitioners filed a suit.

4. On receipt of the suit summons, the respondents failed to appear before the Trial Court and as such they were set exparte and the Trial Court passed a Judgment and Decree on 30.11.2000, thereby decreed the suit. In order to execute the said decree, the petitioners filed



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an execution petition in E.P.No.20 of 2003 for delivery of possession and the same was also ordered. In the execution petition, the respondents filed an application in E.A.No.123 of 2003 to set aside the order of delivery. It was dismissed and aggrieved by the same, the respondents preferred Civil Revision Petition in C.R.P.No.178 of 2004 and obtained interim order of stay for two weeks on 13.02.2004 in C.M.P.No.1378 of 2004 in C.R.P.No.178 of 2004. However, the said stay petition was dismissed on 04.08.2006. While pending interim order, the respondents demolished the suit building and as such the petitioners lodged a complaint. The respondents also had sold away the suit property by the registered sale deed dated 01.06.2005 vide Document No.2541 of 2005 in favour of one Arokiasamy. Therefore, the petitioners also filed a petition for restoration of possession of the suit property and it is pending. In the meanwhile, this Court allowed C.R.P.No.178 of 2004 by an order dated 20.12.2007. The respondents also filed a petition in I.A.No.2043 of 2007 under Order 9 Rule 13 CPC to set aside the exparte decree granted in O.S.No.2077 of 1997. Therefore, this Court directed the Trial Court to dispose the set aside petition, within a period of one week from the date of receipt of the order. The Trial Court set aside the



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exparte decree on 24.01.2008. It was challenged before this Court in C.R.P.No.2010 of 2008. This Court dismissed the Civil Revision Petition and confirmed the order of setting aside the exparte decree. Considering the submission made by the petitioners herein, this Court observed that they are always open to seek restitution of possession in the manner known to law, even in the same proceedings.

5. Therefore, the petitioners filed a petition to restore their possession of the suit property in I.A.No.3508 of 2008 and it is still pending. Therefore, the petitioners filed an application under Order VI Rule 17 CPC to amend the plaint with the following amendments:-

“ 4(A) That on 30.11.2000 this Hon'ble Court was pleased to pass an exparte decree directing the defendants to hand over the 'B' schedule property to the plaintiffs and also permanent injunction restraining the defendants from interfering with the suit property etc.

4(B) That the plaintiffs filed E.P.No.20 of 2003 for realizing the fruits of the decree. At that stage the defendants filed E.A.123 of 2003 to set aside the exparte order of delivery of possession passed in E.P.20 of 2003, that on 14.12.2003 the Hon'ble Court was pleased to reject the application in E.A.123/2003. Against that order the defendants filed C.R.P.178 of 2004 before the Hon'ble High Court. In C.M.P.1378 of 2004 in CRP 178/2004 the defendants filed an affidavit categorically admitting the



identity of property and occupation by the plaintiffs in a portion of the suit premises. The certified copy of the affidavit in filed C.M.P.1378/04 herewith may be read as part and parcel of this suit pleadings.

4(C) That on 01.06.2005 the defendants transferred the entire suit schedule property to one Arokkiyasamy, in violation of the subsisting permanent injunction Decree. As per settled law such alienation is non-est in the eye of law, and the plaintiffs ignore the same.

4(D) That on 12.09.2005 the Advocate Commissioner filed his report in I.A.2135/05 in O.S.525/05 in respect of the suit property stating that in the suit premises materials were stored for erecting construction and pits were dug in the premises. The certified copy of the Advocate Commissioners report may be read as part and parcel of this pleading.

4(E) The Plaintiffs submit that on 20.12.2007 the Hon'ble High Court has given a categorical finding in CRP 178 of 2004 regarding the identity of the suit schedule property. Certified copy the order of the High Court filed herewith may be read as part and parcel of the pleadings of the plaintiff. The said order has become final. Hence, as per the law declared by the Apex Court in Hanil Era Textile Ltd case reported in 2004 (3) CTC 220 at 221 "Any attempt to re-argue case which has been finally decided by Court of last resort is a clear abuse of process of Court, regardless of principles of rejudicate. Hence, the identity of the suit property has already been adjudicated by the High Court the same cannot be re-opened.

4(F) The Plaintiffs submit that I am given to understand that as held in 1996(5) SCC 539, lispendens purchaser is neither necessary nor property party. Further, I am given to understand that as held in 2015(4) CTC 113 in case of purchase during lispendens in violation of injunction, the



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possession of the allienee is illegal. Further, I am given to understand that as reported in 2007(2) CTC 562 SC “Lispenders alienation will not affect the plaintiffs rights in any way in the suit schedule property”

4(G) The plaintiffs submit that recognizing their right to be put back in the same position as the plaintiffs were at the time prior to injunction the Hon'ble High Court has in CRP 2010 of 2008 by an order dated 30.10.2008 directed the plaintiffs to initiate proceedings for restoration of the property, forcibly dispossessed by the defendants during his pendants in the same main proceedings in O.S.2077/97. By virtue of that order the plaintiffs filed I.A.3508/08 before this Hon'ble Court for restitution and the same is pending. The certified copy of the order passed by the Hon'ble High Court in CRP 2010/08 dated 30.10.2008 is filed herewith and the same may be treated as part and parcel of the suit pleadings.”

6. The respondents contended that the respondents had already sold out the property under the registered sale deed dated 01.06.2005 vide Document No.2541 of 2005 in favour of one Arokiasamy and he was in possession of the property. Originally, the said property was acquired by the respondents by way of assignment from the District Collector, Kancheepuram, dated 20.08.1989 by the proceedings in R.Dis.No.11796 of 1989. Thereafter, the Special Tahsildar, Saidapet, assigned the same to the respondents by his proceedings dated 25.10.1989 in RC.No.9639 of 1989. The suit property originally belong



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to Government. Thereafter, the respondents had built up a thatched house and were paying B-Memo charges for years together till the assignment of patta. Thereafter, the revenue records were mutated in favour of the first respondent and thereafter, it was settled in favour of the second respondent by the registered settlement deed vide Document No.3248 of 2003. In fact, they obtained permission for construction of building from municipality in PPA.No.23 of 2005.

7. Therefore, the present application filed for amendment of plaint is barred by limitation. The petitioners are not entitled to seek any relief having not submitted their application challenging the validity of the sale deed executed in favour of a third party ie., the said Arokiasamy. After purchase of the suit property, the said Arokiasamy, filed a suit in O.S.No.521 of 2005 on the file of the District Munsif Court, Alandur, in respect of the suit properties, with all proper description, for permanent injunction restraining the petitioners from in any manner interfering with the peaceful possession and enjoyment of the suit property. Therefore, the petitioners also filed another suit in O.S.No.525 of 2005 before the District Munsif Court, Alandur, for claiming damages and permanent



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injunction. In the said suit, the petitioners filed an application seeking appointment of Advocate Commissioner and an Advocate Commissioner was appointed.

8. A perusal of the report submitted by the Advocate Commissioner, revealed that the purchaser ie, the said Arokiasamy started construction and all building materials were kept in the suit property. The suit property was also identified by the Advocate Commissioner with the help of the parties. Both the suits are pending. The petitioners failed to file any suit challenging the sale deed executed in favour of the said Arokiasamy. In fact, the purchaser ie., Arokiasamy filed a suit in O.S.No.521 of 2005. On receipt of the suit summons, the petitioners also filed a suit claiming damages and permanent injunction. They have not filed any suit for recovery of possession and they failed to challenge the sale deed dated 01.06.2005. After a period of so many years, the petitioners filed a petition seeking amendment of plaint by introducing survey numbers and boundaries for the suit schedule property. It would alter the structure and nature of suit which is not permissible under law and also the present application has been filed



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after a period of 20 years from the date of the suit.

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9. The learned counsel for the petitioner contended that the limitation is not a preliminary issue and only trial limitation should be adjudicated. Further, the subsequent events must be allowed to do complete justice between the parties. While pending the interim order of stay, thereby stayed all further proceedings of the execution petition, the respondents demolished the house in the suit property and sold out in favour of the said Arokiasamy. Therefore, it is necessary for the petitioners to amend the plaint. The addition of survey numbers and boundaries to the suit property as per the Commissioner's report is only clarificatory in nature which will, at no stretch of imagination, change the cause of action for the suit. Hence, he prays to allow this revision.

10. Admittedly, the purchaser the said Arokiasamy, also filed a suit in O.S.No.521 of 2005 as against the petitioners and it is pending on the file of the District Munsif Court, Alandur. The petitioners also filed another suit in O.S.No.525 of 2005, before the same Court and it is also



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pending for claiming damages and permanent injunction. Therefore, the amendment sought for by the petitioner cannot be allowed and the Trial Court rightly dismissed the petition seeking amendment of plaint, that too after a period of 20 years.

11. Therefore, this Court finds no infirmity or illegality in the order passed by the Courts below and this revision is liable to be dismissed.

12. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

1. The Principal District Munsif Court at Alandur.
2. The District Munsif Court, Alandur.

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and C.M.P.No.5764 of 2019

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