



C.R.P(MD)Nos.1501 of 2013 & 1292 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2023
DELIVERED ON : 18.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)Nos.1501 of 2013 & 1292 of 2014
and
M.P(MD)No.1 of 2013

(In C.R.P(MD)No.1501 of 2013)

The Secretary,
C.M.S.Children's Home,
Mahilchi Nagar,
Palayamkottai,
Tirunelveli.

... Petitioner

Vs.

Sankaralakshmi @ Lakshmi,
Through the Power Agent Arumugam,
S/o.Udayar,
1/57, Pillaiyar Koil Street,
Anna Nagar,
East Kaduvetti,
Kaduvetti,
Nanguneri Taluk,
Tirunelveli District.

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated

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09.04.2013 in I.A.No.245 of 2013 in O.S.No.631 of 2010 on the file of the
Principal District Munsif Court, Tirunelveli.

For Petitioner : Mr.V.Balaji
For Respondent : Mr.H.Arumugam

(In C.R.P(MD)No.1292 of 2014)

Sankaralakshmi @ Lakshmi,
Through her Power Agent,
U.Arumugam,
S/o.Udayar,
1/27, Pillaiyar Kovil Street,
Annanagar, East Kaduvetti,
Kaduvetti, Nanguneri Taluk,
Tirunelveli District.

... Petitioner

Vs.

The Secretary,
C.M.S.Children's Home,
Mahilchi Nagar,
Palayamkottai,
Tirunelveli.

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in so far rejecting the amendment passed in I.A.No.245 of 2013 in O.S.No.631 of 2010 dated 09.04.2013 on the file of the Principal District Munsif Court, Tirunelveli.

For Petitioner : Mr.H.Arumugam



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For Respondent : Mr.V.Balaji

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COMMON ORDER

These Civil Revision Petitions are preferred as against the fair and decreetal order dated 09.04.2013 in I.A.No.245 of 2013 in O.S.No.631 of 2010 on the file of the Principal District Munsif Court, Tirunelveli. I.A.No. 245 of 2013 was filed by the petitioner / petitioner / plaintiff under Order VI, Rule 17 and Section 151 of the Code of Civil Procedure to amend the plaint. For the sake of convenience, the parties herein are referred to as arrayed in I.A.No.245 of 2013.

2. The petitioner in the said I.A was the plaintiff in the original suit. The original suit in O.S.No.631 of 2010 is one for declaration and recovery of possession of the plaint scheduled property consisting an area of 82.75 cents land comprised in S.No.710/3 of Kulavanigarpuram Village, Melapalayam Sub Registration, Palayamkottai Registration District. The respondent / defendant is the Secretary of CMS Children's Home, Mahilchi Nagar, Palayamkottai, Tirunelveli.



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3. The reason for preferring the said I.A arose due to certain averments made by the respondent / defendant in their written statement. The respondent had filed a written statement stating that the petitioner / plaintiff Sankaralakshmi's father Nambi Reddiyar had executed a sale deed on 16.10.1964 bearing document No.4296/1964 in favour of Christian Welfare Service Society bearing No.32/64 which has been renamed as CMS Children Home, Mahilchi Nagar, Palayamkottai, that is, the respondent / defendant herein. Being astounded by the said pleadings made by the respondent / defendant, for the purpose of substantiating the fact that her father Nambi Reddiyar had neither executed any sale deed nor handed over the possession of the plaint schedule property to the respondent / defendant or their predecessor in title, it has become necessary to file an amendment petition. In addition to that, the petitioner / plaintiff also disputed the signature and the thumb impression in the said registered sale deed in favour of the defendant as that the same is neither the thumb impression nor the signature of her father. The particulars of amendment sought for by the petitioner / plaintiff was to amend the short cause title of the plaint paragraph Nos.2, 5, 9, 10 and the prayer column of the said plaint. However,

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it is pertinent to mention here that the plaintiff has filed the original suit for declaration of title and recovery of possession of the plaint schedule property from the respondent / defendant. The learned Trial Court on perusing the counter, amendment petition and also hearing both the parties on merits, partly allowed the said I.A. Assailing the same, the present Civil Revision Petition came to be filed.

4. Heard the learned Counsels for the petitioner / plaintiff and respondent / defendant at length and carefully perused the materials available on record.

5. The learned Counsel for the petitioner / plaintiff relied on the following decisions:

(i) ***P.Mariappan Vs. P.Mohankumar reported in 2021 (5) CTC 727***
dated 15.03.2021 and

(ii) ***Asian Hotels (North) Limited Vs. Alok Kumar Lodha and Others reported in 2022 (5) MLJ 710 (SC)*** dated 12.07.2022.



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6. The learned Counsel for the respondent / defendant relied on **2002**

(7) SCC 559 (Sampath Kumar Vs. Ayyakannu and Another) dated 13.09.2022.

7. Now, the crux of the issue is as to whether the learned Trial Court ought to have allowed the said amendment petition instead of partly allowing the same.

8. The petitioner / plaintiff, Sankaralakshmi is the daughter of one late Nambi Reddiar. The plaint schedule property originally belonged to the petitioner / plaintiff's father Nambi Reddiar by the strength of sale deed bearing document No.204/1964 dated 13.07.1964. The claim of the petitioner / plaintiff is that she is entitled to the possession and title of the plaint schedule property by the strength of a Will in her favour executed by her father on 06.02.1990, in which the plaint schedule property was also included. The petitioner / plaintiff has perfected her title over the same by effecting mutation and also by paying land tax in her name. While so, on 30.09.2008, the plaintiff executed a power of attorney with respect to the plaint schedule property in favour of one U.Arumugam. After which, the

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respondent / defendant trespassed and took possession over the plaint schedule property thereby, defeating the plaintiff's right over the plaint schedule property. This necessitated the petitioner / plaintiff to file a suit for declaration of title over the plaint schedule property and recovery of possession of the same from the respondent / defendant.

9. Strongly contradicting the contentions raised by the petitioner / plaintiff in her plaint, the defendant filed a written statement by categorically stating that the plaintiff's father Nambi Reddiar executed a registered sale deed on 16.10.1964 bearing document No.4296/1964 in favour of the defendant's Society by name Christian Welfare Service which was renamed as CMS Siruvar Illam of Christian Mission Service. After putting a compound wall around the plaint schedule property, the same was settled on 20.12.1965 to Christian Mission Service Private Limited which is registered under the Company Act. From 20.10.1965, the plaint schedule property is exclusively under the title and possession of the said Christian Mission Service Private Limited. After filing of the written statement by the defendant, the petitioner / plaintiff filed the said I.A seeking to amend the plaint in six counts as follows:



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(i) The Short cause title of the defendant was sought to be amended as the Christian Mission Private Limited through its Managing Director.

(ii) In para 2, the defendant's address was sought to be amended as the Christian Mission Private Limited, 12, Sungurama Chetty Street, Chennai-1 through its Chairman and Managing Director.

(iii) After para 5 to add two paragraphs as 5A and 5B, in which in 5A the amendment sought for was that the petitioner / plaintiff's father never executed any sale deed in favour of the defendant at any point of time and that he was completely in possession and title over the same for several years, which is evident from the fact that on 19.05.1989 a part of the plaint schedule property to an extent of 0.20.0 hectares was acquired by the Competent Authority and Assistant Commissioner (Urban Land Tax) for which the petitioner / plaintiff's father also received compensation. In para 5B, the pleadings sought to be included is that the plaintiff is exclusively in possession of the plaint schedule property by effecting mutation and paying land tax with respect to the plaint schedule property. In the year 2010, making use of the opportunity that the petitioner / plaintiff was not at station



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the respondent / defendant caused hindrance to the peaceful possession of the petitioner / plaintiff over the plaint schedule property.

(iv) To make an addition of pleadings in para 9 to the effect that the signature and the thumb impression in the alleged sale deed dated 16.10.1964 bearing document No.4296/1964 in favour of the respondent / defendant does not belong to that of Nambi Reddiar and hence, the said document is not legally sustainable and the same has to be cancelled.

(v) In para 10, the Court fee column was sought to be amended and

(vi) In the relief column, the petitioner / plaintiff sought to amend the “ஆ” relief that the sale deed bearing document No.4296/1964 dated 16.10.1964 will not bind the petitioner / plaintiff and the same is liable to be cancelled.

10. The respondent / defendant vehemently opposed these amendments by categorically asserting that the address of the defendant sought to be amended by the petitioner / plaintiff is irrelevant and the



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respondent / defendant did not have any office or anything in the address as required by the plaintiff. In furtherance to the same, the respondent / defendant further contended that a third party to the said sale deed cannot dispute the genuineness of the sale deed dated 16.10.1964 after 48 years of his registration and that the only option open to the petitioner / plaintiff is to file a suit for declaration to declare the said sale deed as illegal. The respondent / defendant also vehemently opposed the allegation that the signature and thumb impression and the sale deed of 1964 was forged as a imagination. It was further contended by the respondent / defendant that in point 3 of the particulars of amendment, the petitioner / plaintiff claimed that she came to know of the sale deed dated 16.10.1964 only after the respondent / defendant filed the written statement that is in the year 2011. But whereas in the affidavit, the petitioner contends that the signature and thumb impression of Nambi Reddiar has been forged. For this itself would prove that the said allegation is a fabricated story and that the said claim is completely barred by limitation.

11. The learned Counsel for the petitioner / plaintiff further contended that no serious prejudice would be caused to the respondent / defendant by



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allowing this amendment application and that the proposed prayer is well within the period of limitation because the factum of execution of the sale deed was known to the petitioner / plaintiff only on the date of filing of the written statement by the respondent / defendant and hence, the proposed prayer is well within the period of limitation. Moreover by way of this amendment, the nature of the suit will also not be changed and hence, the learned trial Court ought to have allow the amendment petition fully.

12. After considering the submissions made by both the parties, it is significant to mention here that the amendment sought for is a pre-trial amendment but the main suit filed by the petitioner is one for declaration of title of the petitioner / plaintiff over the plaint schedule property and consequential recovery of possession of the plaint schedule property from the respondent / defendant. After the filing of a detailed written statement by the respondent / defendant, this amendment petition is filed by the petitioner / plaintiff.

13. The proposed first amendment is related to the name of the respondent / defendant herein. the petitioner / plaintiff prays to amend the



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name of the defendant as the Christian Mission Private Limited through its Chairman and Managing Director. No doubt, the respondent / defendant is a registered company under the Company's Act and there is no dispute about the name of the respondent / defendant. Hence, the learned Trial Court rightly permitted the petitioner / plaintiff to amend the name of the respondent / defendant as Christian Mission Private Limited and the same being a legal entity / company to be sued in its own name. Since the petitioner / plaintiff failed to prove or produce any documents to show that the post of Managing Director or Chairman existed in the said Company, the said first proposed amendment was permitted partly as Christian Mission Service Private Limited alone. As far as the address of the respondent / defendant in the second proposed amendment is concerned, the respondent / defendant vehemently opposed that they do not have any office in the said address and since the petitioner / plaintiff failed to prove that Company is functioning in such an address.

14. The learned Trial Court rightly dis-allowed the second amendment seeking to amend the address of the respondent / defendant. Moreover, the amendment sought for to be added in para 5 as 5B is that the petitioner /



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plaintiff is in enjoyment, possession and title over the plaint schedule property and that the respondent / defendant making use of the absence of the petitioner / plaintiff in the year 2010 caused disturbance in the peaceful possession and enjoyment of the plaint schedule property by the petitioner / plaintiff. Such an amendment is fully contrary to the pleadings in para 6 of the plaint, wherein the petitioner / plaintiff submitted that on 13.09.2008, the respondent / defendant forcefully trespassed into the plaint schedule property and took possession over the same and also sought for a relief of recovery of possession of the plaint schedule property from the respondent / defendant in the plaint of the original suit. Such a contradicting pleading shall not be allowed by way of an amendment in the said plaint and hence, the learned Trial Court rightly rejected the said amendment as not permissible. As far as the amendment sought for in the prayer column is concerned, having pleaded in the plaint that the plaint schedule property is exclusively in the possession of the respondent / defendant and having sought for a relief of recovery of possession, the introduction of a new relief seeking to include a new relief would amount to introduce a new case.



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15. Hence, the learned Trial Court rightly rejected the proposed amendments in para 2, para 5B and para 6 of the plaint. Since the petitioner / plaintiff claimed that she came to know of the alleged sale deed dated 16.10.1964 only from the date of filing of the written statement on 11.03.2011 the amendment sought for in para 5A of the plaint detailing the said sale deed was allowed by the learned Trial Court. Though the respondent / defendant vehemently raised the question of limitation that the said amendment should not be allowed, since the question of limitation is always a mixed question of law and fact, the same can be asserted only after proper trial and hence, the learned Trial Court rightly allowed the said amendment.

16. In fine, the learned Principal District Munsif Court, Tirunelveli rightly allowed three amendments thereby rejecting the proposed amendment No.2 and the proposed amendment numbered as 5B.

17. With the above said observation, this Court is not inclined to interfere with the order passed by the learned Trial Court in I.A.No.245 of 2013 in O.S.No.631 of 2010 on the file of the Principal District Munsif



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Court, Tirunelveli. In the result, these Civil Revision Petitions stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

18.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
BTR

To

- 1.The Principal District Munsif Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

BTR

Order made in
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