



C.R.P.(MD) No.1145 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD) No.1145 of 2023

and

C.M.P.(MD) No.5462 of 2023

1.V.G.Ramdass

2.V.G.R.Vasuki

3.V.G.R.Lakshman @ Lakshmana Narayanan

4.V.G.R.K.Seerapathinath

... Petitioners

Vs.

1.K.K.Karuppasamy (Died)

2.K.Sandanakaruppasamy

3.S.Meenambal

4.K.Paranthaman

5.The Branch Manager,
Canara Bank,
Thallakulam Branch,
Madurai – 2.

6.K.Sarawathi

7.K.Annadurai

8.K.Thangasamy (Died)



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9.K.Maharajan

10.K.Dhanabackialakshmi

11.K.Selveeswari

12.T.Rajathi

13.T.Santhakrishnan

14.T.Rajalakshmi

15.T.Kalaiselvi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Ex and Fair Order dated 27.01.2023 passed in I.A.No.233 of 2020 in O.S.No.25 of 2011 on the file of the District Munsif Court, Vadipatti.

For Petitioners : No appearance

For RR2 to 4 : Mr.M.Thirunavukkarasu

ORDER

This case was listed for admission on 28.04.2023. At the time of admission, this Court had expressed its views that the present Civil Revision Petition is not maintainable. However, Mr.Issac Mohanlal the learned Senior Counsel for the petitioners made elaborate submission and requested the Court to adjourn the case for producing case laws in support of the present Civil Revision Petition.



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2. Therefore, this case was specifically directed to be listed today i.e., on 12.06.2023 at 2.15 p.m. for the learned Senior Counsel for the petitioners to make submissions. When the case was called at 2.15 p.m., there is a request for adjournment by the representing counsel. Considering the above, this Court has proceeded to pass the present order.

3. The submissions made by the learned Senior Counsel for the petitioners and the learned counsel for the second to fourth respondents on the date of admission are narrated in this order.

4. The petitioners are the first to fourth defendants in O.S.No.25 of 2011 before the District Munsif Court, Vadipatti.

5. The above said suit has been filed for the following relief:-

(a) to declare the plaintiffs are the absolute owners of the plaint schedule mentioned properties and they are alone having every right, title and interest over the same to deal with the properties and consequently granting permanent injunction against the defendants and their men and agents restraining them from interfering into the plaintiffs peaceful possession and enjoyment of the plaint schedule mentioned properties; and



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(b) to declare that the alleged sale deed dated 11.2.2008 executed by the first defendant infavour of him and infavour of Defendant Nos. 2 to 4 and the agreement of deposit of title deeds executed on 26.6.2009 executed by the defendants infavour of the Canara Bank, Tallakulam Branch at Madurai are invalid, null and void and it will not confer any right, title and interest to the defendants and those documents are vitiated by fraud of the defendants and collusive documents and it does not affects the rights of this plaintiffs and it will not bind the plaintiffs for any reason; and

(c) to direct to pay the cost of this suit."

6. At the time of institution of the suit, the petitioners have paid the Court fee of Rs.151/- as it evident from the reading of the amended plaint that was filed prior to the passing of the impugned order dated 27.01.2023.

7. By the impugned order, the Trial Court has allowed the application filed under Order VI Rule 17(2) of C.P.C., by permitting the plaintiffs in O.S.No.25 of 2011 to amend the paryer for a declaration and for setting aside the sale deed dated 11.02.2008 and the mortgage deed dated 26.06.2009 by the petitioners herein to the Canara Bank, Thallakulam Branch, Madurai.



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WEB COPY 8. The learned Senior Counsel appearing for the petitioners submitted that the Trial Court has committed a grave error in allowing the application for amending the prayer in the suit, as the suit was instituted as early as 07.02.2011 and written statement was filed as early as 12.07.2011, wherein a specific plea has been taken stating that the suit for declaration is maintainable and that the suit was under-valued. It was also stated that the first to fourth respondents/plaintiffs ought to have filed a suit to set aside the sale deed and above said mortgage deed. Hence, it is submitted that the application in I.A.No.233 of 2020 was filed on 07.02.2020 *i.e.*, exactly nine years after the institution of the suit and the same was allowed, vide the impugned fair and ex-order dated 27.01.2023 and therefore, the same is liable to be set aside.

9. It is submitted that the suit itself was an abuse of Court proceedings inasmuch as the first plaintiff [since deceased] had executed a Power of Attorney in favour of the first petitioner /first defendant on 27.12.2007, pursuant to which, the first petitioner herein had executed a sale deed transferring the property in favour of the petitioners 2 to 4 herein.



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10. It is submitted that after the sale deed was executed, there was further development, as a result of which, the value of the property has been increased and therefore, the respondents 1 to 4/plaintiffs started demanding amounts from the petitioners and since it was not acceded to, the suit was filed just three days before the expiry of the limitation.

11. It is submitted that by altering the prayer for declaration to that of setting aside the sale deed and the mortgage deed alters the entire characteristics of the suit. It is therefore submitted that amendment that has been allowed by the learned District Munsif, Vadipatti, is liable to be set aside.

12. It is submitted that the suit would be time barred, as the amendment has been made nine years after institution of the suit and therefore, the impugned order is liable to be set aside.

13. Per contra, the learned counsel for the second to fourth respondents, on the other hand, submitted that the impugned order has been passed properly and does not call for any interference. That apart, it is submitted that the impugned order has been passed by directing the first



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to fourth respondents/plaintiffs to pay costs and therefore, no prejudice is caused to the petitioners/first to fourth defendants. Further, it is submitted that it is open for the second to fourth respondents to canvass their rights to state that the suit is time barred and therefore, he prays for dismissal of the Civil Revision Petition.

14. Having considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent, I am of the view that the petitioners have not made out any case for interference with the impugned order. In any event, the suit is of the year 2011 which is pending predominantly for a long period on various factors. That apart, the amendment that has been allowed is before the commencement of trial. Therefore, the present Civil Revision Petition deserves to be dismissed. Since amendment has been allowed, the petitioners are at liberty to file Written Statement, if any.

15. The District Munsif Court, Vadipatti shall thereafter proceed to frame additional issues, if any, and proceed further with the trial and dispose of the suit, as expeditiously as possible, preferably, within a period of nine months from the date of receipt of a copy of this order.



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C.SARAVANAN, J.

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16. Accordingly, this Civil Revision Petition is dismissed. No cost.

Consequently, connected Miscellaneous Petition is closed.

12.06.2023

Internet: Yes/No

Index: Yes/ No

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To

The District Munsif Court, Vadipatti.

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and

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