



WEB COPY



C.R.P.(NPD) No.2823 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD) No.2823 of 2024

AND

C.M.P.No.15002 of 2024

V.Govindarajulu

... Petitioner

Vs

Alamelu Narayanaswamy (Died)

- 1.Chitra Ramachandran
- 2.Ravi Narayanaswamy
- 3.Venkatanarasimhan Narayanaswamy
- 4.Lakshmi Venkatraman
- 5.M.N.Venkateshbabu
- 6.T.B.Vasudevan
- 7.J.D.Thomas Vijay King
- 8.N.Kingsly

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 13.02.2024 passed by the District Munsif, Chengalpattu, in I.A.No.6 of 2023 in O.S.No.394 of 2014.

For Petitioner : Mr.S.Annakkodi



WEB COPY



C.R.P.(NPD) No.2823 of 2024

ORDER

This civil revision petition arises against the order dated 13.02.2024 passed by the learned District Munsif, Chengalpattu, in I.A.No.6 of 2023 in O.S.No.394 of 2014.

2. O.S.No.394 of 2014 is a suit filed for declaration that the various Settlement Deeds and registered Sale Deeds impugned therein are null and void and for a consequential relief of permanent injunction not to alienate the property and from interfering with the peaceful possession of the plaintiff.

3. The case of the plaintiff is that the suit schedule property is a vacant land, which was purchased by her husband in the year 1965; her husband passed away in the year 1985, leaving behind herself, two daughters and two sons. She went to the suit schedule property in 2014 and on verification, she came to know that several documents have been registered over the same property. She was surprised to note this fact because, it was her husband's property and at no point of time, he had alienated the property in favour of any person. Alleging that the documents



C.R.P.(NPD) No.2823 of 2024

were executed by her husband in favour of the defendants is an act of fraud, she presented a suit for the aforesaid reliefs.

4. The defendants entered appearance and filed a detailed written statement. According to them, the husband of the plaintiff had in fact executed the settlement deeds and only thereafter, they had taken possession of the property. Pending the litigation, the original plaintiff passed away and her children were impleaded as plaintiffs 2 to 5.

5. The impleaded plaintiffs have moved an application in I.A.No.6 of 2023 for amendment of the plaint seeking the relief of recovery of possession, in stead of injunction as originally sought for. After receipt of counter from the defendants, the learned District Munsif allowed the application, against which, the present revision has been filed.

6. Heard Mr.S.Annakkodi, learned counsel for the Civil Revision Petitioner and I went through the records.



C.R.P.(NPD) No.2823 of 2024

WEB COPY

7. Mr.S.Annakodi would submit that the legal heirship certificate produced by the plaintiff would show that the deponent Ravi Narayanaswamy was not shown as a legal heir. He would also plead that the suit having been filed in the year 2014, the amendment application of the year 2023, is hopelessly barred by time. He would also plead that by allowing the application, the learned District Munsif, Chengalpattu, would lose jurisdiction and therefore, the learned District Munsif ought not have allowed the application. He would plead that even on the date of presentation of the plaint, the defendants have constructed a superstructure and therefore, this prayer ought to have been sought in the year 2013 itself. Finally, he would state that despite allowing the amendment on 13.02.2024, the learned District Munsif has been repeatedly adjourning the matter, to enable the plaintiff to amend the plaint and pay the court fee. He would therefore plead that the order of allowing amendment deserves to be interfered with.

8. I have carefully considered the arguments of Mr.S.Annakkodi and I have gone through the records.



C.R.P.(NPD) No.2823 of 2024

9. Insofar as the first argument is concerned, a perusal of the affidavit filed in support of the amendment application shows that Ravi Narayanaswamy/deponent has pleaded him as one of the legal representatives of the deceased plaintiff. It is not in dispute that the original plaintiff passed away on 05.01.2021. The arguments that the deponent is not a legal representative of the deceased plaintiff viz., Alamelu Narayanaswamy was never taken, when the legal representative application was filed and allowed. Therefore, the defendants cannot raise a plea that the deponent is not a legal representative of the deceased Alamelu Narayanaswamy, today.

10. Insofar as the second submission that the application is belated is concerned, perusal of the affidavit would show that it is the specific case of the plaintiff that the defendants have encroached upon the property **after the presentation of the suit and filing of written statement in the year 2019**. The power of amendment is always available to the Court, when subsequent event is pleaded by the plaintiff. When the suit came to be presented, the property was a vacant land. The plaintiff pleads that construction had been put up in the year 2019, which is *pendente lite*.



C.R.P.(NPD) No.2823 of 2024

11. Insofar as the suit for declaration and recovery of possession is concerned, the period of limitation is 12 years, in terms of Article 64 of the Limitation Act, 1963. Therefore, the arguments of Mr.S.Annakkodi that the prayer barred by time, lacks substance.

12. The learned counsel's next submission that the trial Court does not have jurisdiction to allow the amendment, requires some consideration. It is not in dispute that when the suit was originally presented, the learned District Munsif had jurisdiction. If, by virtue of the amendment, the learned District Munsif loses jurisdiction, then, the appropriate procedure will be for the amendment to be allowed and the additional court fee to be received and thereafter, to transfer the suit to the Court which possesses the appropriate pecuniary and territorial jurisdiction. The mere fact that the Court will not have jurisdiction, after the amendment is allowed, does not mean, it does not possess jurisdiction to allow the amendment application. That will be put the cart before the horse. The learned District Munsif, after receipt of the court fee and the amended plaint copy, in case, does not have the pecuniary and territorial jurisdiction, shall obviously transfer it to the Court which is having jurisdiction.



C.R.P.(NPD) No.2823 of 2024

13. With respect to the arguments that construction has been put up by the defendants even before the presentation of the plaint is concerned, that is a matter which has to be brought at the time of trial. When the suit was presented, it was a vacant land. The plaintiff claim, pending litigation, the defendants have trespassed into the schedule property and have put up construction. According to the plaintiff, the trespass is *pendente lite*, hence, they are entitled to amend the plaint and seek appropriate reliefs. In fact, if any construction is coming *pendente lite*, the plaintiff need not amend the plaint at all, but, it looks like they are abundantly cautious by seeking the said relief by way of an amendment. The trial Court has not foreclosed the defence that has been taken by the defendants that the construction was put up even before the presentation of the plaint. So, no prejudice is caused to the defendants by allowing the amendment.

14. With respect to the last plea that after allowing the amendment application, the trial Court has been repeatedly adjourning the matter for the purpose of receiving the amended plaint and by granting such adjournments, the order passed by the trial Court on 13.02.2024 does not become bad, by subsequent adjournments. All that the Court has to see is, whether the cause of action has



C.R.P.(NPD) No.2823 of 2024

changed or whether the defendants are being taken by surprise or in exceptional cases, whether the amendment is barred by time. None of these considerations arise in the present case and therefore, no exception can be taken to the order of the learned District Munsif, Chengalpattu. The learned District Munsif, Chengalpattu, is requested to expedite the process of amendment, so that the defendant will not plead any mistake on the part of the Court.

With the above observation, this revision stands dismissed. No costs.
Connected C.M.P. is closed.

05.08.2024

gya

Index : Yes/No

Neutral Citation : Yes/No



C.R.P.(NPD) No.2823 of 2024

To
WEB COPY

The District Munsif Court
Chengalpattu



WEB COPY



C.R.P.(NPD) No.2823 of 2024

V.LAKSHMINARAYANAN, J.

gya

C.R.P.(NPD) No.2823 of 2024

05.08.2024