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C.R.P.(PD)No.2698 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2698 of 2023

and

C.M.P.No.16635 of 2023

1.Ponnammal

Govindhammal (Died)

2.Dhanabakkiyam

3.Saraswathi

4.Sampath Kumar

5.Vidhya

.. Petitioners

Vs.

1.Arunachalam

2.Arivazhagan

3.Periasamy

4.Govindharaj

5.Kandan Thangam

6.Velmuthukumar

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of



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Constitution of India, to set aside the fair and decreetal order, dated 03.07.2023, in I.A.No.5 of 2023 in O.S.No.33 of 2017 on the file of the Principal District Court at Tiruppur.

For Petitioners : Ms.G.Lavanya

For Respondents : Mr.R.K.Goutham
for Mr.D.Raghu

ORDER

The present Civil Revision Petition arises against an order passed in I.A.No.5 of 2023 in O.S.No.33 of 2017 on the file of the learned Principal District Judge at Tiruppur.

2. O.S.No.33 of 2017 is a suit for declaration that the settlement deed alleged to have been executed by the mother of the plaintiffs and the 1st defendant in favour of the 1st defendant is null and void, and for consequential relief that the documents that had been executed by the 1st defendant in favour of the other defendants is null and void, and for preliminary decree of partition and allotment of 4/5th share to the civil revision petitioners.

3. For the sake of convenience, the parties shall be referred to as per their rank in the suit.



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4. The case of the plaintiffs is that the property belonged to the mother of the plaintiffs and the 1st defendant one Mayangammal. According to them, the 1st defendant played a fraud on the said Mayangammal and had got a settlement deed executed in his favour. It is their case that for the business purposes of the 1st defendant/Arunachalam, he requested Mayangammal to execute a mortgage deed and taking advantage of her age and the relationship that he shared with her, instead of mortgage deed, he got a settlement deed executed in his favour.

5. They would further plead that Mayangammal had also filed a suit in O.S.No.273 of 2009 before the learned District Munsif at Avinashi and on account of the fact that Mayangammal had passed away on 09.04.2013, the suit could not be prosecuted. Subsequently, the plaintiffs came to know of the fact that the properties had been alienated by the 1st defendant and hence, they came forward with the suit for the aforesaid reliefs.

6. Resisting this claim, a detailed written statement was filed by the 3rd defendant denying the allegations made by the plaintiffs. Pending the



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suit, an application was taken to implead the 6th defendant and also for amending the prayer seeking declaration that the settlement deed executed on 23.02.2017 is null and void and does not bind the share of the plaintiffs. These applications were allowed by the learned Judge and the plaint also stood amended accordingly.

7. At the time of cross examination of D.W.2, the plaintiffs took out yet another application for amending the plaint. According to them, certain facts which were necessary to be brought forth to the notice of the Court, the fraud that had been played by the 1st defendant/Arunachalam on Mayangammal, had to be elaborated. Accordingly, they took out an application in I.A.No.5 of 2023.

8. On service of notice, a detailed counter was filed by the respondent stating that the petition is not maintainable and it is for the third time an application is being filed for the purpose of an amendment.

9. The learned trial Judge after hearing arguments came to the conclusion that the amendment will change the fundamental character of the



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suit and therefore, the learned Judge dismissed the petition. The learned Judge found fault with the petitioners that they had been repeatedly filing the applications for amendment and also of the fact that they were attempting to develop a new case during the course of trial. This order was passed on 03.07.2023. Aggrieved by the same, the plaintiffs are in revision before me.

10. Notice was ordered in the revision on 08.08.2023. On service of notice, Mr.R.K.Goutham, representing Mr.D.Raghu, has entered appearance on behalf of the respondents.

11. Ms.G.Lavanya would submit that even after the amendment application, the frame of the suit, the cause of action and the relief sought continued to remain the same. She would plead that the plaintiffs have already alleged in the plaint, in particular in Paragraph No.7, that the 1st defendant had practiced guile on his mother/Mayangammal and had procured a settlement deed. All that the plaintiffs now want to do is to expand and clarify the plea already taken.

12. Mr.R.K.Goutham would submit that it has become a practice for the plaintiffs to take out one application after another and keep the pot



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boiling. He would also point out that this is the third amendment application and if the relief is granted, it will make the defendants to defend a new case which had not been pleaded prior to the amendment application. He would therefore vehemently contend that the application deserves dismissal with an exemplary cost.

13. Heard Ms.G.Lavanya, appearing on behalf of the petitioners and Mr.R.K.Goutham, appearing on behalf of the respondents and I have carefully gone through the records.

14. The narration of the aforesaid facts would show that the fulcrum of the plaintiffs' case is that the 1st defendant had cheated Mayangammal and obtained a settlement deed. By way of an amendment, this fulcrum had not been changed. What they seek to add by way of this amendment application is to bring to the notice of the Court certain facts which would amplify the plea that has already been taken. In other words, the amendment application only clarifies and amplifies the existing pleas that have been found in the plaint from the date of its presentation. The defendants will not be taken by surprise. The plea that the 1st defendant had informed their mother that he is



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going to obtain a mortgage deed, but had obtained a settlement deed is already available on record.

15. An application under Order VI Rule 17 of the Code of Civil Procedure requires liberal construction unless and until, the same changes the frame of the suit, the cause of action or projects a new case before the Court.

16. As stated above, the amendment application does not affect any of these three fundamental principles relating to amendment of the plaint. A clarificatory application or an application seeking to amplify an existing plea should normally be allowed unless and until, it is going to cause prejudice to the parties. The plea of fraud/guile having already been taken, I do not see how the defendants will be taken a back, if the amendment application is granted. However, I have to take note of the submission of the learned counsel for the respondent that this is the third time that such an amendment application has been filed. The learned trial Judge could have imposed heavy costs on the plaintiffs and that could have obviated the present revision.



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17. In the light of the above discussion, the Civil Revision Petition stands allowed. The order passed by the learned Principal District Judge at Tiruppur, in I.A.No.5 of 2023 in O.S.No.33 of 2017, dated 03.07.2023, is set aside. The application in I.A.No.5 of 2023 will stand allowed on a condition that the plaintiffs shall pay a sum of Rs.10,000/- to the defendants as cost. The said cost shall be paid on or before 19.07.2024. In case, the cost is not paid on or before the aforesaid date, the Civil Revision Petition will stand automatically dismissed without any further notice to this Court. Consequently, connected Civil Miscellaneous Petition is closed.

19.06.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.

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To
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The Principal District Court,
Tiruppur

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