



WEB COPY



C.R.P.(PD).No.2827 of 2022 &
C.M.P.No.15264 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.2827 of 2022 &
C.M.P.No.15264 of 2022

1.G.Venkatachalam
2.G.Arumugam
3.G.Krishnan

... Petitioners

-Versus-

Chinnaraj Nainar (deceased)

1.G.Venkatesan
2.Deivanai
3.Revathi
4.Manjula

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Final order passed in I.A.No.5 of 2021 in O.S.No.68 of 2016 on the file of the Additional Subordinate Judge Court, Krishnagiri.

For Petitioners : *Mr.S.Kanniah*

For Respondents : *Mr.P.M.Duraisamy*

ORDER

The suit O.S.No.68 of 2016 is a suit for partition.



C.R.P.(PD).No.2827 of 2022 &
C.M.P.No.15264 of 2022

WEB COPY

2. The case of the plaintiffs is that the property is ancestral in nature. By an arrangement in the family, the property was kept for the maintenance of the grandfather of the plaintiffs, namely Ponnusamy Nainar. The maintenance was to subsist, obviously during his lifetime. After the demise of Ponnusamy Nainar, the property was to be equally enjoyed by Govindaraj Nainar and Chinnaraj Nainar, the sons of Ponnusamy Nainar.

3. Chinnaraj Nainar obtained a sale deed from his father, Ponnusamy Nainar on 25.09.1980 vis-a-vis the suit property. This sale deed was projected as a defence in the written statement in the suit for partition. Therefore, by way of abundant caution, an application for amendment of the plaint was moved in I.A.No.5 of 2021 to declare the sale deed dated 25.09.1980 as null and void and as fabricated and bogus.

4. This application came to be dismissed on the ground that the prayer is barred by limitation. Against which the present revision.



C.R.P.(PD).No.2827 of 2022 &
C.M.P.No.15264 of 2022

WEB COPY

5. Heard Mr.S.Kanniah for the petitioners and Mr.P.M.Duraisamy for the respondents.

6. This revision arises against the order dismissing the application in I.A.No.5 of 2021 in the suit for partition. It is the case of the plaintiffs that what Ponnusamy Nainar, the grandfather, had was only a life estate in the property. The life estate can be alienated. But such alienation will be valid only as long as the life estate holder is alive. In other words, alienation will be coterminous with the life of the life estate holder. Therefore, if the plaintiffs succeed in proving that the property is ancestral in nature and what was granted to Ponnusamy Nainar was only a life estate, the declaration that is sought would only be consequential to the relief that had been already granted.

7. In this regard, it is pertinent to note the case in ***A.K.Gupta and Sons Ltd. vs. Damodar Valley Corporation (AIR 1967 SC 96)***, wherein the Supreme Court held as hereunder:

“It is not in dispute that at the date of the application for amendment, a suit for a money claim under the contract was barred. The general rule, no doubt, is that a party is not allowed by amendment to set up a new



WEB COPY



C.R.P.(PD).No.2827 of 2022 &
C.M.P.No.15264 of 2022

case or a new cause of action particularly when a suit on the new case or cause of action is barred: Welden v. Neale. But it is also well recognised that where amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: see Charan Das v. Amir Khan and L.J.Leach & Company Ltd. v. Jardine Skinner and Co. The principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes Cropper v. Smith and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended Kisandas Rupchand v. Rachappa Vithoba approved in Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil. The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in Cooke v. Gill, in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation



WEB COPY



C.R.P.(PD).No.2827 of 2022 &
C.M.P.No.15264 of 2022

by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd. and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case" have been understood to mean "new set of ideas" : Dornan v. J.W. Ellis & Co. Ltd.. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new seat of ideas to the prejudice of any right acquired by any party by lapse of time."

8. If this principle is applied to the facts of the present case, it is not that a new plea has been raised by the plaintiff, but this amendment would only be consequential to the relief that had already been sought, when the plaint was presented in the year 2016. It is by way of abundant caution that they seek a declaration that the sale deed is forged and bogus. The plaintiff would still have to prove that the property is ancestral in nature and what was available in the hands of Ponnusamy Nainar was only a life estate. If and only they succeeded in proving these two facts, they would be entitled to dispute the sale deed executed by Ponnusamy Nainar in favour of Chinnaraj Nainar/the first defendant. Therefore, the application for amendment cannot be dismissed on



C.R.P.(PD).No.2827 of 2022 &
C.M.P.No.15264 of 2022

WEB COPY

the grounds that it changes the frame of the suit or introduces a new cause of action.

9. My reading of the amendment shows that it neither changes the frame of the suit nor introduces a new cause of action. Therefore, the order of the learned judge in I.A.No.5 of 2021 in O.S.No.68 of 2016 dated 31.03.2022 is set aside. I.A.No.5 of 2021 will stand allowed. The plaintiff will be entitled to amend the plaint. It is needless to state that on such amendment, the defendant will be entitled to take all such defences available to him.

10. With the above direction, civil revision petition is allowed. The cost in the revision will follow the result in the suit. Consequently, connected miscellaneous petition is closed.

04.04.2024

nl

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order



WEB COPY



C.R.P.(PD).No.2827 of 2022 &
C.M.P.No.15264 of 2022

To

1.The Additional Subordinate Judge Court, Krishnagiri.



WEB COPY



C.R.P.(PD).No.2827 of 2022 &
C.M.P.No.15264 of 2022

V.LAKSHMINARAYANAN, J.

nl

C.R.P.No.2827 of 2022 &
C.M.P.No.15264 of 2022

04.04.2024