



C.R.P.No.4256 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P.(PD).No.4256 of 2022
and C.M.P.No.22357 of 2022

Mahadevan

...Petitioner/petitioner/plaintiff

-Vs-

1.Vijayaraghavan

2.The Collector,
Salem District - 636 012

3.Tahsildar,
Omalur Taluk,
Salem District - 636 012

4.Village Administrative Officer,
Karuppur Village, Omalur Taluk,
Salem District - 636 012.

5.Head Land Surveyor,
O/o.The Tahsildar, Omalur Taluk,
Salem District - 636 012.

6.Sumathi

..Respondent/respondent/defendant

Prayer:- Civil Revision Petition has been filed under Article 227 of the



C.R.P.No.4256 of 2022

Constitution of India, against the Order in I.A.No.1 of 2021 in O.S.No.160 of 2008 on the file District Munsif Court, Omalur dated 18.08.2022.

For Petitioner : Mr.Suryanarayanan
for Mrs.Jayasudha Suryanarayanan

For R2 to R5 : Mr.R.Siddharth
Government Advocate

For R1 & R6 : M/s.T.S.Vijaya Raghavan

ORDER

This Civil Revision Petition has been filed as against the order passed in I.A.No.1 of 2021 in O.S.No.160 of 2008 on the file of the District Munsif Court, Omalur, dated 18.08.2022, wherein the petitioner herein has filed a petition before the trial Court to amend the plaint under Order 6 Rule 17 of CPC and the same was partly allowed. As against the order passed by the trial Court, the petitioner has filed this Civil Revision Petition.

2. According to the petitioner he is the plaintiff in the main suit and he has filed a suit for relief of declaration and for permanent injunction as against the defendants. In fact, originally, the suit property belongs to the petitioner through sale deed dated 15.10.2007. Originally, the said property belongs to Poosari, Karuppiah and Govindaraj through partition in the year 1999. On 20.06.2007, the said Poosari executed the power of attorney in favour of the 6th defendant, who is the wife of the first defendant and thereafter the said power of



C.R.P.No.4256 of 2022

attorney was cancelled on 15.10.2007 and on the same day, he executed the sale deed in favour of the petitioner/plaintiff in respect of his 1/3 shares over the properties. Based on the sale deed, the suit was filed. During pending suit the petitioner filed a petition in I.A.No.1061 of 2017 to amend the plaint. At the time of filing of suit, there was a typographical error in paragraph **6(a)** of the first line that date was mentioned as 19.06.2007 instead of 20.06.2007. In the second line, date was mentioned as 15.10.2010 instead of 15.10.2007 and the said error came to the knowledge of the petitioner recently. In fact, the properties belong to Poosari, Karuppiah and Govindaraj and thereby the said Poosari had 1/3 shares and the said share of the Poosari were purchased by the petitioner. Therefore, the property has not been divided between the parties. Therefore, the plaint relief has to be amended for the relief of partition. Therefore, the petitioner/plaintiff filed a petition to amend the plaint.

3. According to the respondents, the properties belong to Poosari, Karuppiah and Govindaraj, as per the joint sale deed in their favour and the said Karuppiah and Govindaraj have executed deeds in favour of these respondents. The said poosari had 1/3 shares over the property and he executed a power of attorney dated 20.06.2007 in respect of his 1/3 shares in favour of 6th respondent who is wife of 1st respondent. Thereafter, the 6th respondent had



C.R.P.No.4256 of 2022

executed the documents conveying the property to the 1st respondent. While so, the petitioner who is none other than the brother of this 1st respondent, insisted the said Poosari and cancelled the power of attorney and got sale deed in favour of the petitioner. The said document is an invalid document. The plaint was filed in the year 2008 and already the respondent has filed a written statement and now after the long gap filed this petition only to delay the proceedings, hence this petition is liable to be dismissed.

4. Before the trial Court, no oral or documentary evidence adduced on both sides. The trial Court after hearing both sides, dismissed the petition in respect of amendment for partition and allowed the typographical error crept in the paragraph **6(a)** of the plaint. As against the said order, the present Civil Revision Petition has been filed.

5. The learned counsel for the petitioner would contend that the petitioner has filed a suit for declaration and for permanent injunction and thereafter filed a petition to amend the prayer for partition and the same was dismissed. In fact, he purchased the undivided 1/3 share of his vendor. Therefore, the property has to be divided between the parties, hence he filed a petition to amend the prayer of the plaint for the relief of partition and also prayed to amend in respect of the



C.R.P.No.4256 of 2022

dates wrongly mentioned while typing the plaint. But the trial Court dismissed the amendment in respect of prayer for partition and only allowed the amendment of dates. Therefore the order passed by the trial Court is liable to be set aside.

6. The learned counsel for the respondent would contend that the petitioner has filed a suit for declaration and for permanent injunction in the year 2008. While so, in the year 2017, he filed a petition to amend the plaint and the same was allowed. At that time, the petitioner has not filed any application to amend the prayer for partition and the suit has been filed in the year 2008 and the amendment sought for the prayer is in the year 2021. In fact, the property sought to be partitioned has been conveyed to the first respondent through power agent of the original owner and the first respondent has been in possession of the suit property. Therefore, the petitioner is not entitled for the relief of partition. The trial Court also dismissed the petition that the suit was filed in the year 2008. The 6th respondent was arrayed as a party and also prayer sought for declaration in respect of the sale deed was amended on 12.11.2007. At that time, the petitioner has not taken any steps. Now when the case was posted for examination of P.W.1, the petitioner has filed this petition and thereby dismissed the petition and therefore, the present Civil Revision



C.R.P.No.4256 of 2022

Petition is liable to be dismissed.

WEB COPY

7. This Court heard both sides and perused the materials available on record.

8. This petition has been filed by the petitioner as against the order passed by the trial Court by refusing to allow the amendment sought for by the petitioner. The main suit was filed in the year 2008 for permanent injunction and thereafter, an application was filed to implead the 6th respondent and prayer was also amended for the relief of declaration in respect of documents executed on 12.11.2007 and the same was also allowed. In the plaint itself, the plaintiff pleaded that the property was purchased from Poosari and had sold the property of his 1/3 shares. While so, the petitioner had knowledge about his share over the property, but he has not filed any suit for partition and he has not taken any steps to amend the prayer at the time amending the plaint in the year 2017. Now the case is posted for cross examination of P.W.1, at this stage, he filed a petition to amend the plaint. The main suit was filed in the year 2008 and the sale deed is in the year 2007, but the petitioner failed to take steps for partition at earliest possible of time and now after 13 years he filed petition to amend the prayer without any valid reasons. Therefore, the trial Court after



C.R.P.No.4256 of 2022

elaborate discussions correctly dismissed the petition by holding that after the trial has been commenced and after 14 years from the date of filing of the suit, the petitioner has filed petition without any valid reasons and thereby correctly dismissed the petition. Therefore, the order passed by the trial Court is in order. There is no infirmity or perversity found in the order passed by the trial Court. In view of the above said discussion, this Court is of the opinion that this Civil Revision Petition has no merits and is liable to be dismissed.

9. It is for the trial Court to decide all the issues raised by the petitioner in the suit and the plaintiff is at liberty to take appropriate steps in respect of the relief sought for in this petition through separate proceedings in accordance with law.

10. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

17.04.2024

rjr

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

P.DHANABAL, J



WEB COPY



C.R.P.No.4256 of 2022

rjr

To

The District Munsif Court, Omalur.

C.R.P.(PD)No.4256 of 2022
and C.M.P.No.22357 of 2022

17.04.2024