



C.R.P.(PD) No.4654 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD) No.4654 of 2024

&

CMP No.26079 of 2024

S.Murugesan

.. Petitioner

Versus

1. C.Rathinambal
2. C.Kuppusamy
3. C.Baby
4. C.D.Devilakshmi
5. Vijayakumar

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Fair order and Final order dated 04.03.2024 made in I.A.No.05 of 2023 in O.S.No.136 of 2013 on the file of the I Additional Subordinate Court, Erode, by allowing the Civil Revision Petition.

For Petitioner : Mr. Ramesh
for Mr. D.Lakshmipathy

For Respondents : Mr.Vignesh Venkatachalam for R3 & R4
Mr.K.S.Jayaganeshan for R5



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ORDER

WEB COPY This civil revision petition challenges the order of the I Additional Subordinate Court at Erode in I.A.No.5 of 2023 in O.S.No.136 of 2013 dated 04.03.2024.

2. For the sake of convenience, the parties shall be referred to as their ranks in the suit.

3. O.S.No.136 of 2013 was presented by the plaintiff seeking for specific performance of an agreement of sale entered into between himself and the first defendant through her power of attorney, the second defendant. Two agreements were projected for the purposes of obtaining a decree, an unregistered agreement of sale dated 11.12.2009 and had registered an agreement of sale dated 15.11.2010. The plaintiff claimed that the suit agreement was to a value of Rs.10 lakhs and by 03.03.2011, he had performed the major portion of his bargain by paying Rs.9 lakhs. Since the first and second defendants exhibited reluctance in executing the sale deed, he issued a lawyer's notice on 01.03.2013 and followed it up with the



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suit on 19.03.2013.

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4. The suit came to be decreed *ex parte* on 20.06.2013. After depositing the balance amount of Rs.1 lakh, to put the decree in the execution, the plaintiff presented E.P.No.114 of 2014. Execution was ordered and a sale deed was executed on 02.12.2014. Steps were taken to take physical possession of the property in E.P.No.194 of 2015 and physical possession was also delivered on 16.02.2016. This should have normally put to an end to the litigation, however it was not to be.

5. The impleaded defendants 3 and 4 claimed that the first defendant had executed a settlement deed in their favour on 20.11.2012. Prior to this, she had cancelled the power of attorney in favour of the second defendant. On coming to know of the decree and execution proceedings, defendants 3 and 4 presented O.S.No.568 of 2016 seeking several reliefs. Primarily, it was to set aside the decree in O.S.No.136 of 2013 and the execution proceedings that were carried on the basis of the decree passed therein.

6. After having litigated before the trial Court for few years, they



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presented a civil revision petition before this Court in CRP (NPD) No.447 of 2021. The reliefs in the revision was to set aside the *ex parte* judgment and decree dated 20.06.2013 and to set aside the sale deed registered pursuant to the execution ordered by the Court on 02.12.2014. Summons were sent to the respondents in the civil revision petition. For reasons not disclosed, the respondents failed to appear before the Court.

7. The matter was taken up for final disposal and this Court came to a conclusion that it is better that the I Additional Subordinate Judge at Erode reconsiders the position and passes a considered judgment in O.S.No.136 of 2013. The Court did not set aside the sale deed dated 02.12.2014 nor did it ordered re-delivery of possession of the property on the decree being set aside. The effect of the order passed in the revision is that the entire decree was ripped open and the learned I Additional Subordinate Judge at Erode was called on to decide the suit afresh. Liberty was also granted to the third party civil revision petitioners to implead themselves. Subsequently, they have been impleaded as defendants 3 and 4.

8. There remains yet another party to be discussed that is the 5th



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defendant. The 5th defendant and the 1st defendant are siblings. After the execution of the agreement in favour of the plaintiff, a suit for partition came to be presented by the 5th defendant against the 1st defendant. This suit was before the Additional District Judge at Erode in O.S.No.228 of 2011. That suit was decreed on 20.11.2012 and it was declared that the 1st defendant and 5th defendant have equal shares over the suit schedule mentioned property. It is on the basis of the decree in O.S.No.228 of 2011, it transpires that the 1st defendant had executed a settlement deed in favour of defendants 3 and 4. On the strength of which, they presented the revision in CRP (NPD) No.447 of 2021 and the suit in O.S.No.568 of 2016.

9. One more narration remains to be stated, not wanting to ride two horses at the same time, defendants 3 and 4 withdrew the suit in O.S.No.568 of 2016 and prosecuted the civil revision petition alone. As the decree had been ripped open by this Court on 20.07.2021, the entire suit was again back before the I Additional District Munsif for his examination.

10. Taking note of the actions initiated by defendants 3 to 5, the



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plaintiff took out an application to amend the plaint. Prior to this, application for impleadment had been filed to implead defendants 3 to 5 in suit and it stood allowed. The prayer sought for in the amendment application was to introduce certain averments in the plaint. In addition, they also wanted to introduce two additional prayers namely, for a declaration that the decree passed in O.S.No.228 of 2011, (the basis for infavour of defendants 2 & 4) the settlement would not be binding on the plaintiff and consequently, for a declaration that the settlement deed executed by 1st defendant in favour of defendants 3 and 4 would also not be binding on the plaintiff.

11. This application was stiffly opposed by defendants 3 to 5 by way of a counter. The plea of defendants 3 and 4 is that the agreements dated 11.12.2019 and 15.11.2010, respectively are products of the collusion between the 2nd defendant/power of attorney, and the plaintiff and hence, nothing can result of such collusion. It was also pleaded that the plaintiff is a mere agreement holder and not owner of the property, hence, he has no vested right over the same. They finally pleaded that the existence of the settlement deed dated 20.11.2012 is known to the plaintiff, as this is a public



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record, from the year 2013 itself. In any event, he came to know about the facts of defendants 3 and 4 and defendant 5 getting a right over the property by virtue of the suit filed in O.S.No.568 of 2016 and consequently, the prayers are barred by limitation.

12. The learned Trial Judge was persuaded to agree with defendants 3 to 5. He consequently allowed the prayers insofar as the inclusion of the pleadings is concerned, but rejected it insofar as the additional reliefs that were sought for. Hence, this revision at the instance of the plaintiff.

13. I heard Mr.Ramesh for Mr.D.Lakshmipathy for the petitioner and Mr.Vignesh Venkatachalam for respondents 3 and 4 and Mr.K.S.Jayaganeshan for respondent 5.

14. Mr.Ramesh submits that the amendment is consequent to the impleading of defendants 3 to 5. He states that on account of the order passed by this trial Court in CRP (NPD) No.447 of 2021, the entire suit has come up before the Court again. In order to avoid any technical objections,



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he has filed the applications for amendment. He pleads that the decree passed in O.S.No.136 of 2013 dated 20.06.2013 was set aside by this Court only on 20.07.2021 and therefore, he could not have filed an application for amendment earlier. Therefore, he assails the order pleading that dismissal of the application to include the prayers is contrary to law and requires interference.

15. Rejecting these arguments, Mr.Vignesh Venkatachalam pleads that by virtue of the suit filed in O.S.No.568 of 2016, the plaintiffs came to know about the settlement deed and the decree in the suit in O.S.No.228 of 2011. The cause of action having arisen in 2016, the plaintiff ought to have presented a counter claim by 2019, and having failed to do so, when the civil revision petitioner filed his written statements in O.S.No.568 of 2016 on 21.09.2017, he is not entitled to make a claim today by way of amendment to the plaint.

16. He pleads that on account of the denial of the right of the plaintiff by defendants 3 to 5, there has arisen a cloud over the claim of the plaintiff



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as early as in 2016 and therefore, the amendment should have been filed, in terms of Article 58 of the Limitation Act, within three years from the date of service of summons in O.S.No.568 of 2016 and that not having been done, the prayer is hopelessly barred. He refers to Section 55 of the Transfer of Property Act to plead that the plaintiff should have acted with due diligence and since he did not do so, he is not entitled to the benefit of the amendment.

17. Finally, he points out that the plaintiff is a very close associate of the second defendant and the entire suit has come about on account of collusion between the plaintiff and the second defendant and therefore, he is not entitled to any relief much less the relief of amendment.

18. These vehement pleas of Mr. Vignesh Venkatachalam are echoed by Mr. Jayaganeshan. He states that the decree was passed in the year 2012 and to claim that the decree should be set aside after a long lapse of time does not deserve any consideration at all.

19. In support of the submissions, learned counsel for the respondents relied upon the judgment in



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(i) *Khatri Hotels Private Limited v. Union of India, AIR 2011 SC*

3590,

(ii) *Anathula Sudhakar v. Buchi Reddy, AIR 2008 SC 2033; and*

(iii) *State of Punjab v. Gurdev Singh, AIR 1991 SC 2219.*

20. I have carefully considered the submissions on all sides.

21. The narration of the facts set forth above is not in dispute. The fact that the first defendant is the owner of 50% of the suit schedule mentioned property is not in dispute. The remaining 50% vests with her brother, the 5th defendant. An agreement of sale entered into between the plaintiff and 1st defendant through 2nd defendant is also not in dispute. It is sought to be defeated on the ground that the power of attorney, which enabled the 2nd defendant entered into an agreement with the plaintiff, was itself cancelled and further, that it is a result of collusion.

22. Insofar as the first plea that the power of attorney itself has been cancelled and therefore, the agreement of sale could not have been entered into with the plaintiff is concerned, this issue has been left open by this



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Court to be tried by the learned I Additional Subordinate Judge in CRP (NPD) No.447 of 2021. Hence, I cannot consider the same in this revision.

23. With respect to collusion that was pointed out by learned counsel for the respondents, at the stage of considering an application for amendment, I need not go into the merits or the tenability of the plea that is raised by the plaintiff. It is always open to the defendants to plead that the agreement is tainted by collusion and being a suit for equitable relief for specific performance, the plaintiff is not entitled to any benefits. These are matters which have been rightly addressed before the trial Court, after pleadings are completed, specific issues being framed on this issue and evidence is let in on those aspects. Therefore, the plea that the amendment should be defeated on the ground of collusion also does not appeal to me. The other two pleas that have been raised by learned counsel for the respondent deserves some discussion.

24. According to the defendants, since the amendment is barred by time, it was rightly not granted by the trial Court. In *L. J. Leach And Company Ltd vs Jardine Skinner, 1957 SCC 357*, a four Judge Bench of the



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Supreme Court pointed out that the plea of limitation is one of the matters to be considered by a Court, at the time of granting, leave to amend. However, that by itself does not take away the power of the Court to grant the amendment. To put it in other words, if in the view of the Court, the amendment seems *prima facie* is barred, even then the Court can grant leave to amend if the circumstances of the case so warrant.

25. The plea that the right to sue accrued in 2016 and therefore, the amendment should have been filed by way of claim or counter claim deserve some scrutiny.

26. By the time, the suit in O.S.No.568 of 2016 had been presented, the plaintiff had been empowered with the decree for specific performance and the decree had been put in execution and he was also benefited with a sale deed.

27. By virtue of the decree passed in suit for specific performance, the agreement and cause of action to present the suit merges with the decree. That is to say, once a decree is passed, the agreement which gave the cause



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of action for the plaintiff to present the suit, does not exist any more. The decree being a higher one absorbs the agreement and thereafter, it is the decree alone which has to be considered. It is seen that the sale deed was executed in favour of the plaintiff on 02.12.2014. Therefore, the claim of the plaintiff in the subsequent suit was that he is the owner of the property. For the mere fact that another person claims a rival title does not mean a party has to file a suit for declaration of his title unless and until it throws “a cloud over its title”.

28. I need not labour much as to what is meant by “cloud over title” as this position has been settled by the Hon'ble Mr.Justice R.V.Raveendran in *Anathula Sudhakar vs P. Buchi Reddy, AIR 2008 SUPREME COURT 2033*. In paragraph 12 of the said judgment, learned Judge held that a cloud is created over one's title when a contesting title is set up or a title in favour of a third party is set up by the defendants.

29. Let us now look whether the facts of the case, there is a cloud or not. It is not in dispute that Rathinambal and Vijayakumar are co-owners of the property. The plaintiff claims the property by virtue of an agreement of



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sale that he had entered into with a power of attorney of Rathinambal. By virtue of the decree that is passed in his favour, whatever right that Rathinambal had over the property stood vested in him. Similarly, defendants 3 and 4 claimed a right over the property by virtue of a settlement deed executed by the very same Rathinambal on 20.11.2012. The 5th defendant Vijayakumar claims to be a co-owner of Rathinambal. Therefore, the plea of the plaintiff, defendants 3 to 5 is that Rathinambal is the owner. None of the parties have set up a title themselves or title in favour of any third party adverse to the interest of Rathinambal.

30. That being the situation, the plea of cloud over title raised by Mr.Vignesh Venkatachalam is only a red herring arguments. The herring does not exist nor is it a red sign of danger for the plaintiff. I do not find even a whiff of a cloud, let alone, dark clouds over title of the plaintiff.

31. I should add here that the plaintiff does not claim title of the property but only claims that he is an agreement holder, by virtue of Section 54 of the Transfer of Property Act, all that the plaintiff gets is a right to



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enforce the agreement entered into between himself and the 1st defendant through the 2nd defendant. In a suit for specific performance, an issue of title is absolutely alien. In such a suit, a Court is normally, going to see:-

- (1) Whether the agreement is true and genuine?;
- (2) Whether the agreement holder has been ready and willing to convert the sale agreement into a sale deed?
- (3) Whether the agreement holder suffers from any bar under Section 16 which prevents him to get a decree for specific performance? and
- (4) whether the specific performance itself should be granted when it is not equitable?

32. In such a suit, an agreement holder cannot set up a title against that of his vendor. If he does so, he will be shooting himself in his foot. A person cannot claim specific performance of an agreement of sale challenging the title of his vendor. The net result of this discussion is the plea of “cloud over title” has been created only for the purpose of this revision. It is rejected.



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33. Insofar as the plea of limitation is concerned, Mr.Vignesh is right that he had not only obtained a document on 20.11.2012 but also sought to enforce the document by presenting the suit in O.S.No.568 of 2016. Had the 3rd and 4th defendants continued to prosecute the suit, if a counter claim or a suit for title was filed in the year 2024, challenging the settlement deed, perhaps, the Court could have rejected the same as barred by limitation. When I am presented with a live case, I need not deal with hypothesis, for a court never answers academic questions.

34. Unfortunately for Mr.Vignesh, his clients chose to withdraw O.S.No.568 of 2016 on 02.02.2021. Mr.Vignesh argued the withdrawal of the suit was in order to prosecute the revision in CRP (NPD) No.447 of 2021. As to how a party should decide the litigation strategy is entirely within the party's jurisdiction and his advisors and it is not for this Court to comment on the same. Suffice it to say that the clear and imminent threat that was presented to the plaintiff in the present case in form of O.S.No.568 of 2016 evaporated faster than the dew in the sands of Sahara by virtue of withdrawal of the said suit. The suit having been withdrawn, the threat



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automatically evaporated. Therefore, to clutch on the presentation of the suit on 31.08.2016 to plead that the amendment is barred is like a drowning man clutching at a straw. I am not willing to give a life line to the defendants 3 and 4 to hit back at the plaintiff on the basis of presentation of the suit in O.S.No.568 of 2016.

35. It is here that the submission made by Mr.Ramesh deserves consideration. From 20.06.2013 onwards the plaintiff was happy with the decree that he had obtained. From 20.06.2013 till 20.07.2021, he could not have sought for the relief that he has sought for in the present case, since the suit itself had been disposed of. There is no question of an application for an amendment of plaint once the suit itself stood decreed. Therefore, the cause of action for him to present the amendment application arose on and from 20.07.2021, the date on which the civil revision petition was allowed.

36. By virtue of that judgment, as pointed out above, the decree was ripped open and the suit was yet again on file by the I Additional Subordinate Judge. It is only from that date, he could have filed an



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application for amendment. He also filed the application on 03.06.2023 which is well within three years from the date on which the order was passed by this Court in CrP(NPD) No.447 of 2024. The law does not expect a party to do impossibility, and therefore, I cannot expect the plaintiff to have amended the plaint when he could not have. When this Court does not have such expectations, certainly Mr.Vignesh Venkatachalam's client also cannot entertain such expectations.

37. Above all, I have to take note of Section 22 of the Specific Relief Act. Under Section 22 of the Specific Relief Act, a plaintiff in a suit for specific performance is not only entitled to seek for possession but also for partition and separate possession of the property in addition to specific performance. As per Section 22(2) proviso, if a plaintiff in a suit for specific performance files an application seeking for any of the reliefs covered under Section 22(1)(a) and (b), then it can be considered by the Court at any stage of the proceedings. The suit being still at the stage of trial, I do not find any bar in granting the relief that the plaintiff seeks for which obviously is consequential to the Court decreeing the suit for specific performance.



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38. In case, the suit for specific performance is dismissed obviously, the amended reliefs cannot be granted by the Court.

39. This presents yet another problem. I have to see if the Court were decreed the suit for specific performance and what would be the situation with respect to the two documents that have come into effect on 20.11.2012. This issue has been settled in *Lala Durga Prasad And Another vs Lala Deep Chand And Others*, AIR 1954 SC 75.

40. The Court was called upon to decide as to the nature of a decree in a suit for specific performance. The Supreme Court approved the practice of this Court whereunder a person, who gets an interest in the property, after the agreement of sale is called upon to execute a sale deed along with the original vendor for the purpose of conveying proper title to the plaintiff. In fact, it pointed out that under the Specific Relief Act, 1877, such a power is available to the Court. Not much of a difference, at least insofar as the relief of specific performance is concerned has been found under the Specific



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Relief Act of 1963. Therefore, the judgment rendered in *Lala Durga Prasad* case continues to hold the field. If that be the situation, irrespective of nature of documents that came into the hands of defendants 3 and 4 and 5th defendant, if the suit for specific performance to be decreed, they necessarily have to join 1st defendant and execute a document in favour of the plaintiff. Therefore, no independent right can be claimed by either defendants 3 and 4 or by the 5th defendant.

41. In the light of above discussions, I am not able to sustain the dismissal portion of the order passed by the I Additional Subordinate Judge, Erode, in I.A.No.5 of 2023 in O.S.No.136 of 2013 dated 04.03.2024. The order, insofar, it has dismissed the prayer sought for is set aside. The Civil Revision Petition is allowed. The plaintiff will be entitled to amend the plaint as sought for. Needless to add, defendants 3 to 5 are entitled to raise all pleas available to them to the amended prayer including the plea that the agreement is a result of collusion. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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