



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)Nos.1066 to 1068 of 2020

and

C.M.P.(MD)No.6881 of 2020

C.R.P.(MD)No.1066 of 2020:-

- 1.Pitchiah
- Perumal @ Pandaram (Died)
- 2.Madakannu
- 3.Pappa
- 4.Subburaj
- 5.Pushpa
- 6.Thilagavathy
- 7.Minor Pandiselvam
- 8.Minor Maharaja

... Petitioners

-vs.-

Jailani

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair order and decreetal order dated 31.08.2020 made in I.A.No.7 of 2020 in O.S.No.320 of 2012 on the file of the I Additional District Munsif Court, Tirunelveli and to allow the same.



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For Petitioners :Mr.D.Srinivasa Ragavan
for Mr.S.P.Maharajan
For Respondent :Mr.C.Susi Kumar

C.R.P.(MD)No.1067 of 2020:-

1.Pitchiah
Perumal @ Pandaram (Died)

... Petitioner

-vs.-

1.Jailani
2.M.Diwan Mydheen
3.D.Fathimal

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair order and decretal order dated 08.11.2019 made in I.A.No.1 of 2020 in O.S.No.320 of 2012 on the file of the I Additional District Munsif Court, Tirunelveli and to allow the same.

For Petitioner :Mr.D.Srinivasa Ragavan
for Mr.S.P.Maharajan
For R1 :Mr.C.Susi Kumar
For R2 :No appearance

C.R.P.(MD)No.1068 of 2020:-

1.Pitchiah
Perumal @ Pandaram (Died)
2.Madakannu



3.Pappa
4.Subburaj
5.Pushpa
6.Thilagavathy
7.Minor Pandiselvam
8.Minor Maharaja

... Petitioners

-vs.-

Jailani

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair order and decreetal order dated 31.08.2020 made in I.A.No.6 of 2020 in O.S.No.320 of 2012 on the file of the I Additional District Munsif Court, Tirunelveli and to allow the same.

For Petitioners :Mr.D.Srinivasa Ragavan
for Mr.S.P.Maharajan
For Respondent :Mr.C.Susi Kumar

COMMON ORDER

All these Civil Revision Petitions have been filed challenging the orders passed by the learned I Additional District Munsif, Tirunelveli, in I.A.No.7 of 2020, I.A.No.1 of 2020 and I.A.No.6 of 2020 in O.S.No.320 of 2012, dated 31.08.2020, 08.11.2019 and 31.08.2020, respectively.



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2.The petitioners in C.R.P.(MD)No.1066 of 2020 are the plaintiffs in the suit. Originally, the petitioners have filed a suit for injunction and later, the they filed an application to modify the prayer and the prayer was modified as suit for declaration.

3.According to the petitioners/plaintiffs, they were in possession and enjoyment of the suit schedule property and it is their contention that they are the owner of the suit schedule property by way of a registered sale deed, dated 17.01.1960 with regard to Item No.1, by way of a registered sale deed, dated 05.12.1961 with regard to Item No.2, by way of a registered sale deed, dated 06.12.1961 with regard to Item No.3 and by way of a registered sale deed, dated 10.10.1963 with regard to Item No.4 in the suit schedule property.

4.It is the case of the petitioners/plaintiffs that during cross examination of DW-3, they came to know that the defendants had sold the property to third parties, against whom, they filed an application in I.A.No.1 of 2019 to implead them, as defendants 2 and 3.



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5. Thereafter, the plaintiffs have also filed an application in I.A.No.6 of 2020 to reopen the suit, which was posted for arguments by contending that in the written statement filed by the defendant, the defendant had suppressed the material evidence. The plaintiffs have also filed another application in I.A.No. 7 of 2020 to withdraw the suit and after getting the leave of the Court to file a comprehensive suit, as the suit itself was filed without impleading the some other persons and there are defects in the plaint.

6. The trial Court has dismissed I.A.No.1 of 2019 by observing that Ex-B5 was marked in respect of patta granted in favour of the proposed defendants and Ex-B6 is the encumbrance certificate with regard to the suit schedule property. Both the documents were marked in the year 2016 and in respect to the patta and encumbrance certificate, the defendant had relied on those documents in the written statement filed in the year 2012 and I.A.No.1 of 2019 was filed in the year 2019, after a lapse of seven years and on that ground, the trial Court has dismissed the said application.



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7.The trial Court has also dismissed the application in I.A.No.7 of 2020, which was filed seeking leave of the Court to withdraw the suit and to file a comprehensive suit, by recording the reason that even though the plaintiffs have knowledge about proper parties to the suit, have not initiated any steps to bring them on record on time after marking Ex-B5 and Ex-B6 and such claim seeking permission under Order 23 Rule 1 CPC is not a formal defect, that could be cured and on these reasoning, the trial Court had dismissed I.A.No.7 of 2020.

8.The trial Court has dismissed the application in I.A.No.6 of 2020, which was filed to reopen the case, as the trial has been completed and is right for argument and in view of the dismissal of I.A.No.7 of 2020. Challenging the same, present Civil Revision Petitions have been filed by the plaintiffs.

9.The learned Counsel for the petitioners vehemently contended that the trial Court was erred in dismissing the applications filed by the petitioners/plaintiffs. The learned Counsel for the petitioners submitted that the first appellate Court has power to grant permission to withdraw the suit with



liberty to file a fresh suit for the same cause of action in order to prevent multiplicity of proceedings. The trial Court without even considering the reasons stated in the applications filed by the petitioners/plaintiffs, had dismissed the applications, which is *per se* illegal and needs interference of this Courts.

10. The learned Counsel for the petitioners also relied on the following judgments:

(1) The Hon'ble Supreme Court in **2018 (6) SCC 567** between ***Gurbakhsh Singh and others vs Buta Singh and another***, had held as follows:

“5. In the present case the record of Civil Suit No. 195 of 1968 in which ex parte decree was passed on 30-6-1969 is not traceable. In the circumstances, there could possibly be some inability in obtaining correct particulars well in time on part of the appellants. At the time when the application for amendment was preferred, only two official witnesses were examined. The nature of amendment as proposed neither changes the character and nature of the suit nor does it introduce any fresh ground. The High Court itself was conscious that the amendment would not change the nature of the suit. In the given circumstances, in our view, the amendment ought to have been allowed. In any case it could not have caused any prejudice to the defendants.

6. While allowing amendment of the plaint, after amendment of



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2002, this Court in circumstances similar to the present case, in **Abdul Rehman v. Mohd. Ruldu** [**Abdul Rehman v. Mohd. Ruldu**, (2012) 11 SCC 341 : (2013) 1 SCC (Civ) 314] , had observed: (SCC pp. 344-45, para 11)

“11. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimise the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in **J. Samuel v. Gattu Mahesh** [**J. Samuel v. Gattu Mahesh**, (2012) 2 SCC 300 : (2012) 1 SCC (Civ) 801] and **Rameshkumar Agarwal v. Rajmala Exports (P) Ltd.** [**Rameshkumar Agarwal v. Rajmala Exports (P) Ltd.**, (2012) 5 SCC 337 : (2012) 3 SCC (Civ) 92] Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”



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(2) This Court in ***C.R.P(MD)No.1542 of 2014*** between ***Sattur Yadhava Community vs Navaneethakrishnan @ Ambarisan***, dated 27.08.2014, had held as follows:

15.A reading of the impugned order reveals that the learned Judge failed to consider as to whether the suit would fail due to defect in the plaint and fail to consider whether the petitioner has given sufficient cause for withdrawing the suit with liberty to file a fresh suit. The learned Judge came to the conclusion that the defect could be rectified by amendment, is not inconsonance with the provisions of C.P.C. and also well settled judicial pronouncement. The learned Judge failed to exercise the power conferred on him by statute. Admittedly, there is a formal/technical defect in the cause of action as well as in the relief sought for. Further, the petitioner has explained as to how the defects crept therein. These grounds are sufficient reasons to exercise the power under Order XXIII Rule 1(3) (B) C.P.C., granting permission to the plaintiff. The impugned order suffers from irregularity for not exercising the power conferred on the learned Judge. This warrants interference by this Court.”

(3) This Court in ***C.R.P(PD)(MD)No.2246 of 2015*** between ***Balambal vs P.Duraisamy (Died) and others***, dated 25.05.2017, had held as follows:

“10.A plain reading of the above sections, it is made clear as per the provisions of Order 23 Rule 1(3) of the Code of Civil Procedure, where the court is satisfied that a suit must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh for the subject matter of



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a suit or part of a claim, the court can grant liberty to the plaintiff to withdraw the suit with liberty to file fresh suit on the same cause of action. In the case on hand, the court below, without appreciating provisions of law, has dismissed the application as if the plaintiff has no right to withdraw the suit at any point of time and and he is not entitled to seek liberty to file a fresh suit, as the reasons given by the plaintiff cannot be termed as sufficient cause. Hence, the order of the court below is liable to be set aside.”

11.*Per contra*, the learned Counsel for the respondent/defendant contended that at the time of trial, Ex-B5 and Ex-B6, which are patta and encumbrance certificate of the suit schedule property, were marked in the year 2016, whereas, these applications were filed in the year 2019 and 2020, knowing well that third parties' rights have come into force and the petitioners/plaintiffs have not taken steps from 2016, but have only filed an application in the year 2019. The learned Counsel for the respondent/defendant contended that the trial Court by considering the pleadings raised by the petitioners/plaintiffs had dismissed the applications, which needs no interference of this Courts and sought dismissal of these petitions. The learned Counsel for the respondent/defendant contended that the trial is completed and is right for arguments.



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12. It is not in dispute that originally, the plaintiffs have filed a suit for a declaration in respect of a vacant land. As the defendant claimed that he had purchased the property and marked patta and encumbrance certificate in respect of the suit property, the plaintiffs alleged to have made an application to implead them in the suit. When the petitioners/plaintiffs did not take any steps to identify whether the property stands in their name and the subsequent encumbrance created in the suit schedule property and even after the documents were marked as Ex-B5 and Ex-B6 in the year 2016, they did not make any attempt to unearth the same. Pertinently, the plaintiffs have not also made any application questioning to set aside the sale. The petitioners/plaintiffs have slept over knowing that the documents filed by the defendants with regard to patta, Ex-B5 and the encumbrance certificate, Ex-B6 and did not make any application to question the same at the time of marking or thereafter disputing the said document with regard to transfer of title made against the plaintiffs. This Court is of the view that the orders passed by the learned trial Judge need no interference, as the learned trial Judge had considered the the pleadings raised on either side.



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13. On the point of limitation, when the petitioners/plaintiffs had gained the knowledge, ought to have filed an application within a period of three years, ie., before 2019, whereas, these applications have been filed in the year 2019 and 2020.

14. In view of the above, this Court feels that there is no necessity to interfere in the orders passed by the trial Court. Accordingly, the Civil Revision Petitions are dismissed and the orders passed by the learned I Additional District Munsif Court, Tirunelveli, in I.A.No.7 of 2020, I.A.No.1 of 2020 and I.A.No.6 of 2020 in O.S.No.320 of 2012, dated 31.08.2020, 08.11.2019 and 31.08.2020, respectively, are confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2024

Internet : Yes/No
NCC : Yes/No
Index : Yes/No

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To

The I Additional District Munsif, Tirunelveli.



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N.SENTHILKUMAR, J.

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