



C.R.P.PD(MD)No.82 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.PD(MD).No.82 of 2020

&

C.M.P(MD).No.400 of 2020

1.A.Ramakrishnan(died)

2.Manthirathai

3.R.Karuppasamy Raju

4.Seethalakshmi

5.Arunachalavadivu

6.B.Vallithai

... Petitioners

Vs.

1.P.Mani

2.Pitchammal

3.P.Balamurugan

4.P.Esakkiappan



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5.M.Poolpandian
(R5 set exparte in the Lower Court
hence notice not necessary as given up)

6.C.Allikodi

7.Pavalakodi

8.R.Parthasarathy

.. Respondents

(petitioners 2 to 6 and
respondents 6 to 8 are brought on
record as Lrs of the deceased
sole petitioner vide court order
dated 19.02.2024 made in C.M.P.(MD).Nos.1357,1359
and 1360 of 2024 in
CRP(MD)No.82 of 2020)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.10.2019 made in I.A.No. 463 of 2018 in O.S.No.45 of 2013 on the file of Subordinate Court, Kovilpatti.

For Petitioners : Mr.R.Devaraj

For Respondents : Mr.M.Arumugam R1 to 4

No appearance for R5 to 8



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ORDER

This Civil Revision Petition is directed against an order dated 16.10.2019 passed in I.A.No.463 of 2018 in O.S.No.45 of 2013 on the file of the Sub-Ordinate Court, Kovilpatti. The said application was filed under Order 6, Rule 17 r/w. Sec.151 of C.P.C seeking amendment of prayer by adding an alternate relief of declaration of title cum injunction.

2. The original prayer in the suit was to set aside certain registered documents and other documents. From the perusal of the plaint and the averments therein, it is seen that respondent/plaintiffs has claimed title over the subject property and thereby sought setting aside of certain documents executed among the defendants. The said application was allowed by the learned Trial court on the ground that the same is necessary in order to resolve the dispute between the parties once for all, and to avoid future litigations. Aggrieved by the said order, the present Civil Revision Petition is filed.

3. Learned counsel for the petitioner contended that on an earlier



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occasion the respondents/plaintiffs have filed O.S.No.104 of 2007 seeking to declare certain registered documents documents as null and void without seeking cancellation of the said documents. Therefore, the said suit was dismissed for want of seeking cancellation of the said documents. As against the same, the respondents plaintiffs have preferred A.S.No.13 of 2012 on the file the Appellate court, and during the pendency of the said appeal they filed I.A.No.160 of 2012, seeking permission to withdraw O.S.No.104 of 2007 with liberty to file a fresh suit seeking cancellation of the registered documents within a period of 2 months. Liberty as sought for was granted by an order dated 30.01.2013 and consequently, the respondent/plaintiffs have filed a suit on 28.03.2013 within two months, seeking cancellation of the certain registered documents. According to the learned counsel for the petitioners after elapse of five years, the respondents/ plaintiffs have filed the present application seeking amendment of the prayer. The same was objected to on the ground that the liberty that was granted by the Lower Appellate Court in the previous round of litigation is only to file a suit within a period of two months. But the present application is filed after lapse of five years and therefore the same cannot be entertained. It is also also further contented



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that the present application is intended only to delay the suit proceedings without any bonafides.

4. On the other hand, learned counsel appearing for the respondents/plaintiffs contended that immediately after the commencement of trial, the respondent/plaintiffs realised that it would be in the better interest of the respondents/plaintiffs to seek an alternative prayer of declaration of title as well and accordingly an application in I.A.No.463 of 2018 under Or.6 R.17 r/w Sec.151 C.P.C was filed and the same was rightly allowed by the trial court. It is also contented that once the issue as to the entitlement of the respondents/plaintiffs to seek declaration of title is decided, the dispute will be settled between the parties once for all and there would not be any scope for future litigation.

5. This court has carefully considered the submissions made on either side and also perused the entire materials on record including the order under revision.



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6. The learned trial court having taken note of the fact that the issue can be decided between the parties once for all to avoid future litigations allowed the amendment application. It is settled law that any application filed under Or.6 R.17 seeking amendment of the pleadings is required to be considered liberally in order to put an end to the future litigation and also to resolve the actual dispute between the parties once for all. The Hon'ble Apex Court in a series of decisions held that, when such application was filed is not a matter for consideration while deciding the application filed under OR.6 R.17 C.P.C, but what need to be verified is whether such an application is necessary in the context of the facts and circumstances of the case to avoid future litigation and to resolve the actual dispute between the parties once for all. It is the said circumstances which were noticed by the learned trial court and exercised its jurisdiction and allowed the amendment application.

7. The contention of the learned counsel for the petitioner that the amendment of prayer is also required to be filed within the period of two months from the date of withdrawal of previous suit has no substance. The liberty that was granted by the Lower Appellate Court was already utilised by



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the respondents/plaintiffs and the suit was filed in respect of the cause of action in respect of which liberty was granted. Even if this application seeking amendment is not allowed, the respondents/plaintiffs will have a right to file an independent suit for declaration of title and such a right cannot be deprived of or objected to by the petitioners herein. If that be the case, it would be in the interest of both the parties to allow the amendment to put an end to the litigation once for all and for resolving the dispute between the parties.

8. In these circumstances, this court does not find any error or illegality in the order passed by the learned trial court and in the considered view of this court, the learned trial court has exercised its discretion rightly. Hence, this Civil Revision Petition is dismissed. No costs.

9. Consequently, connected miscellaneous petition is closed. The petitioner and other defendants are at liberty to file additional written statement within a period of four weeks from today. Considering the fact that the suit proceedings are stayed in this Civil Revision Petition for the past four



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years, the learned trial court is directed to dispose of the suit as expeditiously as possible at any rate on or before 31.07.2024.

14.03.2024.

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

The Sub Judge, Kovilpatti



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MUMMINENI SUDHEER KUMAR, J.

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