

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

**Present :Tmt. P.R. Supraja, M.L.,
II Additional District & Sessions Judge,
Thanjavur.**

**Monday the 23rd day of September 2024
(Thiruvalluvar Aandu 2055- Purattasi Matham 7th day)**

I.A. No. 76/2024 in O.S. No.135/2018

- (1)Ilandhirayan (died)
- (2)Manimozhi
- (3)Kannan
- (4)Savithiri
- (5)Mathumathi
- (6)Maran

.....Petitioners/Plaintiffs

/Vs/

- (1)Uma Ravivarman
- (2)Karikalan
- (3)Abinaya
- (4)Suseela Killivalavan
- (5)Chithirapaavai
- (6)Dr.S.B.Rajeshram
- (7)Dr.T.R.Nirmala
- (8)LIC Housing Finance Ltd, Thanjavur

.....Respondents/Defendants

This petition having come up for final hearing before me on **11.09.2024** in the presence of Thiru.**A.Vetriselvan**, Advocate for the Petitioners/plaintiffs and of **Thiru.D.Swaminathan**, Advocate for the respondents 4, 5/defendants 4, 5 and of Thiru.R.Ilayaraja, Advocate for the respondents 6 & 7/defendants 6 & 7 and upon hearing the arguments of both sides, upon perusal of the

entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

ORDER

This petition has been filed by the petitioners/plaintiffs under order 6 rule 17 and sec. 151 of CPC to amend the plaint.

(2)Gist of the Affidavit filed by the petitioners:

The 3rd petitioner/3rd plaintiff filed this petition for himself and on behalf of other petitioners. The settlement deed dated 9.11.2017 in favour of the defendants 4 & 5 executed by the 4th defendant's husband Killivalavan. The said Killivalavan having no right to execute the settlement deed. The petitioners ought to have sought to declare the settlement deed as null-and-void. It is necessary to amend the prayer. The suit property was sold by the defendants 4 & 5 through their power agent to the defendants 6 & 7 on 3.11.2021 and subsequently the defendants 6 & 7 have mortgaged the property with the 8th defendant. The defendants 4 & 5 have no right to execute a sale deed in favour of the defendants 6 & 7, it is void ab-initio. Hence, the defendants 6 to 8 are impleaded as parties to the proceedings. It is very important to declare the said sale deed and settlement deed as null and void. Hence, the suit has to be amended consequently. This amendment would not change the nature of the suit. Unless this petition is allowed, the petitioners will be put into irreparable loss and hardship and there is no prejudice to the respondents. Hence, this petition may be allowed.

(3)Crux of Counter filed by the 4th respondent and adopted by the 5th respondent:

This application is not maintainable in law and liable to be dismissed in limine. The respondents 4 & 5 filed the written statement on 15.07.2019 and therefore 3 years' of time is lapsed to seek amendment of the prayer declaring that the settlement deed dated 9.11.2017 as null and void. The petitioners failed to explain the delay in not filing the prayer declaring that the settlement deed dated 9.11.2017 is null and void. Therefore in respect of that prayer the amendment application is not maintainable. The allegation stated by the petitioners in the suit are all false and untrue. This application was filed only to drag on the proceedings. Regarding the same made by the 4th and 5th respondents the law is clear that the transactions made pending suits is subject to the result of the suit. Therefore, the respondents 4 & 5 is contending that the first relief is barred by limitation and the same is not maintainable. So, this petition is to be dismissed.

(4)Crux of Counter filed by the 6th & 7th respondents/defendants:

This petition is not maintainable either in law or on facts and the same is liable to be dismissed in limine. Killivalavan is not having any right to execute settlement deed in favour of 4th & 5th defendants is not correct. The petitioners themselves admitted that they came to know about the above said settlement deed when they filed the suit and they have not taken any steps to declare the above said settlement deed as null and void. After 6 years the

petitioners with malafide intention filed this present petition to amend the plaint it is only to drag the proceedings. The petitioners have not stated any bonafide reason for non-filing the amendment petition till date. Petitioners themselves had knowledge about the above said settlement deed on the date of execution itself. Since, the above said Killivalavan is having every right to execute the above settlement deed. Therefore, the petitioners has not taken any steps. The respondents 4 and 5 are not having any right to execute sale deed in favour of this respondent is not correct. This respondents already impleaded as defendants 6 & 7 in the original suit on the ground that they are the purchasers of the suit property. At the time of impleading this respondents in the original suit the petitioners has not taken any steps to ask for the relief of declaration of the sale deed stands in the name of this respondents as null and void. But the respondents after commencement of the trial filed an application to amend the plaint is not at all maintainable and liable to be dismissed. Hence, this petition is be dismissed.

(5) Point for consideration:

Whether this petition is to be allowed or not?

Point:

(6) Both side arguments heard. Records perused. The learned counsel for the petitioner submit that the suit is filed for declaration, injunction and in the alternative for partition. Originally the suit property belonged to one Duraimanickam. Plaintiffs 1, 2 and 3 are his sons. 4th son died. He was

succeeded by defendants 1 to 3. The 5th son also died and he was succeeded by 4th and 5th defendants. The 4th defendant's husband Killivalavan executed a settlement deed on 9.11.2017 in favour of 4th and 5th defendants. They have in turn executed the sale deed dated 3.11.2021 in favour of 6th and 7th defendants. The 6th and 7th defendants mortgaged the property to the 8th defendants. The learned counsel would submit that the amendment is the pre-trial amendment and the nature of the case is not changed. He would further submit that there is no malafide in seeking the amendment and no prejudice would be caused to the other side. It is his intention that the proposed amendment to declare the settlement deed and sale deed as null and void is not hit by limitation, as the relief claimed in the main suit is for partition.

(7) Per contra, the learned counsel for the respondents 4 and 5 would submit that the settlement deed is of the year 2017 and written statement was filed during the year 2019. Even at the time of filing of suit the plaintiff had knowledge about the settlement deed. Hence this amendment is barred by limitation. The learned counsel for 6 and 7th defendants would also submit that the present petition is barred by limitation and it is filed only with intention to drag on the proceedings.

(8) I have carefully considered the rival submissions and perused the materials on record. The suit was filed for the relief of declaration, injunction and alternative relief for partition during the year 2018. The proposed

amendment sought for by the plaintiff is to seek declaration that the settlement deed dated 9.11.2017 is null-and-void and also the sale deed dated 3.11.2021 is null-and-void. It is the case of the plaintiff that the suit property originally belonged to Duraimanickam who is the father of the plaintiffs 1 to 3 & 2 other sons. Defendants 1 to 3 are the legal heirs of the 4th son of Duraimanickam and defendants 4 and 5 are the legal heirs of the 5th son and that they are equally entitled to share in the property of their father. Whiles, without the knowledge of the plaintiff the property was dealt with by the defendants by executing a settlement deed dated 9.11.2017 in favour of 4th and 5th Defendants, who executed a sale deed in favour of 6th and 7th Defendants on 3.11.2021, who in turn had mortgaged the same to the 8th defendant herein. The pertinent question before this court is whether the prayer to declare the settlement deed dated 9.11.2017 is null-and-void as barred by limitation.

(9) It is pertinent to point out that the present suit for declaration and in the alternative for partition was filed by the plaintiffs during the year 2018 and numbered as O.S 135/2018. A cursory perusal of affidavit reveals that the plaintiff had mentioned about the settlement deed dated 9.11.2017 executed by Killivalavan in favour of the 4th & 5th defendants. In fact, the plaintiff had also obtained Encumbrance Certificate through which he had knowledge regarding the said settlement deed. Further the defendants have also while filing written statements during the year 2019 had mentioned about the

settlement deed. It is crystal clear that in spite of the knowledge regarding the execution of settlement deed during the year 2017, the plaintiff had filed the suit during the year 2018 without seeking a prayer to declare the settlement deed as null-and-void. The learned counsel submitted that due to the mistake of counsel the party should not suffer. This preposition of law cannot be accepted in the present case. It is settled law that by way of amendment under order 6 rule 17 CPC, no right accrued to a party can be taken away by way of limitation as the effect of limitation is retrospective to the date of the suit. Therefore, the prayer presently sought for by way of amendment, is clearly barred by limitation and on that ground alone the petition is not maintainable and liable to be dismissed.

In the result, this petition is dismissed. No costs.

This order is dictated to the Steno-Typist by me, transcribed by her in computer, corrected and pronounced by me in the open court, this the 23rd day of September 2024.

**II Additional District & Sessions Judge,
Thanjavur.**

Petitioners and Respondents side

Exhibits and Witnesses: Nil

**II Additional District & Sessions Judge,
Thanjavur.**

Order

IA.76/2024 in O.S.No.135/2018

Dated: 23.09.2024