

IN THE COURT OF I ADDITIONAL DISTRICT JUDGE, TIRUVALLUR

**PRESENT: Thiru.S.GANAPATHISAMY, B.A., B.L.,
I Additional District Judge, Tiruvallur**

Wednesday, the 29th day of June 2022

**I.A.No.6/2019
in
O.S.No.55/2019**

1. R.Padamchand Jain
2. K.Ramesh
3. Mrs.Shakila Ramesh

....Petitioners / Plaintiffs

Versus

1. Mr.Kothanda Naidu
 2. Venkatesa Naidu
 3. Sudhakar
 4. The District Collector, Tiruvallur District, Tiruvallur.
 5. The District Revenue Officer, Tiruvallur District, Tiruvallur.
 6. The Tahsildar, Uthukkottai Taluk Office, Uthukkottai, Tiruvallur District
 7. The Sub-Registrar, Arani Sub-Registration Office, Arani, Ponneri Taluk,
Tiruvallur District
- Respondents /
Defendants

This Petition coming on 14.06.2022 before me for final hearing in the presence of M/s R.Munuswamy and E.Prabu, learned counsels for the Petitioners/Plaintiffs; M/s P.Krishnan, J.Babu and R.Rajasekaran, counsels for respondents/defendants, upon hearing both sides arguments; perusing the related records, and having stood over for consideration till this day, this Court passes the following:-

ORDER

The petitioners / plaintiffs have filed this application under Order 6 Rule 17 of CPC r/w section 94 (E) and section 151 of CPC to amend the pleadings by incorporating a relief of declaration that the settlement deed dated 23.01.2019 executed by the first defendant in favour of the second defendant is null and void.

2. The averments of the petition and affidavit are briefly stated as follows:-

The first petitioner has purchased the suit property from the second and third respondents through a registered sale deed dated 17.11.2016 and he has been cultivating the property having patta bearing No.733 in his name. Due to the family dispute among first to third respondents and second and third petitioners, first and second respondents petitioned the District Revenue Officer on 23.05.2018 to cancel the patta No.100 of the second petitioner. The attempt of interference by the first to third respondents into the possession of the petitioner constrained the first petitioner to lodge a complaint in police station wherein the police officials advised the first petitioner to approach the Civil

Court and the first petitioner filed a suit in O.S.No.44/2018 for bare injunction. The District Revenue Officer issued a notice to the first petitioner for enquiry on 29.08.2018 and without any enquiry, he cancelled the patta against which the first petitioner filed a Writ petition in W.P.No.1142/2019 and got interim stay. Thereafter the petitioners have filed this suit for the relief of declaration. The first to third respondents attempted to alienate the property with the connivance of the 7th respondent and for the objection send by the first petitioner to the 7th defendant Sub-Registrar, he sent a reply stating that he cannot refuse registration of any document. The first petitioner filed W.P.No.10039/2019 to restrain the Sub-Registrar from registering the document. The Hon'ble High Court passed an order of status quo. In the meanwhile, the first respondent has executed a settlement deed dated 23.01.2019 in favour of the second defendant and the document No.1191/2019 was assigned on 27.03.2019. The 7th respondent registered the document without verifying the revenue records. The first petitioner sent a representation to the Inspector General of Registration to take action. W.P.No.10039/2019 was allowed directing the 7th respondent not to register any document till the disposal of the suit. The settlement deed executed by the first respondent is void. Therefore the relief sought for to nullify the settlement deed is necessary for the proper adjudication of the dispute.

3. The averments of the counter affidavit filed by the first to third respondents are briefly as follows:-

The plaintiffs filed the suit on 01.02.2019. The respondents filed the written statement in June 2019. The first respondent being the absolute owner of the property can deal with the property and he settled the property on 23.01.2019 on the second respondent. The amendment is no way relevant to decide the issue involved in the suit. The plaintiffs are trying to introduce a new case with new relief. The plaintiffs have reproduced the averments of the plaint in their affidavit. The plaintiffs are strangers to the suit property. The petitioners are threatening the officials. The Writ Petition is not relevant to the suit. The plaintiffs have been approaching different forums concerning very same settlement deed. The petitioners are in the habit of improving their case at every stage to overcome the lacuna in their suit.

4. When the application was taken on 14.06.2022, inspite of both the counsels were present, the counsel for the petitioner argued the matter. The counsel for the first to third respondents requested to post the matter for orders undertaking to argue in the meanwhile. But the counsel for the contesting respondents have not argued so far.

5. The point for consideration in this application is where the proposed amendment is necessary for the proper adjudication of the dispute?.

6. The learned counsel for the petitioners submitted that during the pendency of the suit, the first defendant has executed a registered settlement deed dated 23.01.2019 in favour of the second defendant and in the suit filed by the petitioners for the relief of declaration, the relief of nullity of settlement deed is necessary for the adjudication of the dispute.

7. The petitioners / plaintiffs have filed the main suit for the relief of declaration and permanent injunction in respect of the suit property. The first petitioner claims to have purchased entire suit property from the second and third plaintiffs on 17.01.2016. The plaintiffs filed the suit on 07.02.2019. Admittedly the first defendant executed a settlement deed dated 23.01.2019 in favour of the second defendant. According to the plaintiffs, the settlement deed was registered on 27.03.2019 and the first petitioner has challenged the attempt of the 7th respondent to register the settlement deed. The first to third respondents have not denied the fact that the Hon'ble High Court in Writ Petition restrained the 7th respondent from registering any document concerning the suit property till the disposal of the suit. In as much as the plaintiffs are claiming

right and title over the property, they have to necessarily seek for the relief of declaration as to the nullity of the settlement deed.

8. Since the cause of action relating to the settlement deed has arisen during the pendency of the suit, the proposed amendment shall be allowed because the basic structure of the suit is not changed and there is merely change in nature of relief claimed. When the plaintiffs are entitled to challenge the settlement deed by way of suit, they can be permitted to seek the same relief even in the suit. Therefore the proposed amendment would stop the multiplicity of proceedings. The court should try the merits of the case that come before it and should allow all the amendment which may be necessary for determining the real question in controversy. While considering the application for amendment, the court should not go into the correctness or falsity of the case in the amendment. The court should not weigh the merits of such amendment. According to the plaintiffs, the settlement deed was registered only after institution of the suit. Therefore the proposed amendment is necessary for the proper adjudication of the dispute. If the plaint is amended, the respondents will not be prejudiced in any way.

9. In the result, the petition is allowed, no costs.

Dictated by me to the Steno-Typist and transcribed by her, corrected and pronounced by me in the open Court on this the 29th day of June 2022.

**I Additional District and Sessions Judge,
Tiruvallur**

Both side Witness & Exhibits:- Nil

**I Additional District and Sessions Judge,
Tiruvallur**