

IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE,
VILLUPURAM.

Present: Thiru.N.S. Jayaprakash, B.Sc.,B.L.,

Principal Subordinate Judge, Villupuram.

Thursday, the 28th day of March 2024

IA No.858/2014

in

OS No.308/2013

1. Chinnaponnu
2. Ganesan
3. Ezhumalai
4. Arumugam

.... Petitioners/Plaintiffs

//Vs//

1. Geetha
2. Sampath
3. Baskar

.... Respondents/Defendants

This petition having been taken on file on 30.10.2023 and came up for final hearing in the presence of Tr.S.Mugilvannan, learned Advocate on behalf of the Petitioners/Plaintiffs and Tr.C.S.Rajendiran, learned advocate on behalf of the Respondents/Defendants, upon perusing the case records, upon hearing arguments of both side and having been stood over for consideration till this date, this court delivered the following:-

ORDER

The Petitioners/Plaintiffs have filed this petition under Order 6 Rule 17 of CPC to amend the plaint.

2. The Affidavit in brief is as follows:-

The suit was filed to declare that the sale deed dated 03.03.2012 executed by 1st defendant in favour of the 3rd defendant as null and void. The 3rd defendant remains exparte in the suit. A power of attorney deed executed by the petitioners in favour of the 1st defendant on 13.07.1992 was cancelled on 27.03.2008 under Doc.No.132/2008. The said cancellation was also intimated to the 1st defendant. The said averment is not mentioned in the suit due to inadvertance. If the said amendment is not incorporated, the petitioners will be put to great hardship and loss. The proposed amendment is necessary for proper and final adjudication. Hence this petition.

3. The brief contents of the Counter is as follows:

3(1) The petition filed by the petitioner to restore petition is more vexatious, and not maintainable and is liable to be dismissed with costs. The affidavit filed by the petitioner are specifically denied except those which are admitted. The 1st respondent filed the suit OS No.31/2002 for declaration to declare the respondent's unilateral act of revocation of the Registered General Power of Attorney dated 13.07.1992 by revocation deed dated 31.03.1993 is null and void and not binding to the 1st petitioner and the same is premature and for permanent injunction. The suit properties belonged to the petitioners/plaintiffs and the respondents executed a power of attorney deed infavour of the 1st respondent/defendant of 13.07.1992 and that suit OS No.31/2002 properties are converted in to house plots and sold to same third parties by the 1st respondent/defendant on behalf of the petitioners/plaintiffs. The 3rd petitioner/plaintiff entered into an agreement to sale of the same suit properties to him for a sum of Rs.85,000/- on the same day of the execution of the power of attorney and 6 months time fixed for registration of sale deed in favour of him. The above agreement to sale he paid the sale consideration on the following manner as to clear the liability of Rs.20,000/- to one Thrinaveli Kameswaran and obtained a release deed dated 16.02.1993 and handed over the same to the

petitioners/plaintiffs, further Rs.10,000/- that he spent huge amount to convert the land into house Mannagatti Asari, Villupuram, S. Kuppusamy, Neyveli, Kudiappan Thirumangalam and received Rs.27,000/- as an advocate and the same handed over to the petitioners/plaintiffs and further that the 1st respondent/defendant mortgaged the suit properties to one Kalian son of Velu for Rs.50,000/- and paid Rs.10,000/- to petitioners/plaintiffs. In such circumstance alone the respondents/plaintiffs has issued a legal notice dated 17.04.1993. The 1st respondent filed the suit for declaration to declare the revocation deed dated 31.03.1993 on 18.02.2002 before the Principal District Munsif of Villupuram and where the suit has been numbered as OS No.31/2002 and after numbering the suit summons are duly served to the petitioners/plaintiffs and they also engaged a counsel to defend the case on 27.03.2002.

3(2) The respondent since they are not filed written statement they called absent and set exparte and exparte decree has been granted by the court on 05.08.2003 and there after that they alleged that they filed order 9 rule 13 petition along with Section 5 application to condone the delay of 1116 days on 17.03.2008 and those application are returned to give notice to otherside, but that returned not been complied within the time fixed by the court. So far the 1st respondent has no knowledge about the above said applications filed by the petitioners and based on the court decree on 05.06.2003 now the 1st petitioner sold the properties to the 3rd defendant namely Baskar who belongs to Chennai by virtue of sale deed dated 03.03.2012. Thereafter alone they received the alleged representation application notice and alleged that there is delay of 1526 days from representing the above applications. The petitioners are have knowledge about her possession and enjoyment of the suit properties after the exparte decree dated 05.08.2003. The Principal District Munsif of Villupuram in IA No.1022/2013 in OS No.31/2002 dated 09.01.2014 and confirmed the decree dated 05.03.2003. After disposal of the condone delay from the representation and the respondents filed the above suit claiming the sale deed dated 03.03.2012 null and void and where the respondents

pleaded in their plaint the above said IA No.1022/2013 as if pending and they are not pleaded consequence of the application. The petitioners has no cause of action to file this suit and also it is barred from resjudicata and they are estoped from the earlier suit OS No.31/2002 and also quite against the suit decree the above suit filed and claimed the relief by the petitioners without any legal substances. Hence in such circumstances alone after filing the rejection application IA No.603/2014 the petitioners are filed the above IA to amend the plaint and to incorporate the stated pleading highly not sustainable in law and the same is liable to be dismissed and they cannot do that as per the Section 11 of CPC. This petition is liable to dismissed with cost.

4. Heard both sides. Perused Records. Neither Petitioners nor Respondents have examined any witnesses and any documents were marked.

5. Point for Consideration:-

(i). Whether the petitioner has shown sufficient cause to allow the petition in IA No.858/2014 in OS No.308/2013?

(ii). Whether the petition is to be allowed or not?

6. On Point:-

7. Records Perused. Heard both sides.

8. The petitioners' case is that the suit was filed to declare that the sale deed dated 03.03.2012 executed by 1st defendant in favour of the 3rd defendant as null and void. The 3rd defendant remains exparte in the suit. A power of attorney deed executed by the petitioners in favour of the 1st defendant on 13.07.1992 was cancelled on 27.03.2008 under Doc.No.132/2008. The said cancellation was also intimated to the 1st defendant. The said averment is not mentioned in the suit due to inadvertance. If the said amendment is not incorporated, the petitioners will be put to great hardship and loss. The proposed amendment is necessary for proper and final adjudication.

9. The respondents have stated in the counter that based on the power of attorney deed executed in favour of the 1st respondent the suit property was converted into flops by the 1st respondent and a sale agreement was entered by the 1st respondent with Mannangatti Asari for selling the suit property and a sum of Rs.27,000/- was received as advance and paid to the petitioners. The 1st respondent also mortgaged the suit properties with one by name Kaliyan and paid Rs.10,000/- to the petitioners. Whileso, the respondents had received a legal notice dated 17.04.1993 from the petitioners/plaintiffs stating that power of attorney dated 13.07.1992 was cancelled on 31.03.1993. Totally, a sum of Rs.85,000/- was paid by the 1st respondent to the plaintiffs. The 1st respondent also filed a suit in OS No.31/2002 before the learned Principal District Munsif Court, Villupuram seeking relief to declare the revocation deed dated 31.03.1993 as null and void. In the suit, the petitioners were set exparte and an exparte decree was passed on 05.08.2003. Now only, the 1st respondent came to know that a petition to condone the delay in filing the petition to setaside the exparte decree is pending. The suit properties were sold to the 3rd defendant by a sale deed dated 03.03.2012.

10. The petitioners/plaintiffs have filed the suit against the respondents/defendants seeking to declare the sale deed dated 03.03.2012 as null and void. It is the admitted fact that the said sale deed was executed by 1st respondent in favour of the 3rd respondent. The 1st respondent executed the sale deed on the strength of a power of attorney deed executed by the petitioners on 13.07.1992. The same was cancelled on 31.03.1993 by the petitioners.

11. In the plaint, the averments of the petitioners that a cancellation deed was again executed by the petitioners on 27.03.2008 is not incorporated. As far as the proposed amendment is concerned, it is brought by the petitioners only after an exparte decree passed on 05.08.2003. The cancellation deed itself has been executed only on 27.03.2008, after decree dated 05.08.2003 in OS No.31/2002. Therefore,

the said cancellation deed has no importance in this case. The proposed amendment to incorporate the execution of cancellation deed dated 27.03.2008 is only an after thought of the petitioners after the decree dated 05.08.2003. Nowhere in the plaint, it is stated that a cancellation deed was executed on 27.03.2008. Therefore, the same is a new fact proposed to be incorporated in the plaint. The proposed amendment would prejudice the interest of the respondents and will incorporate a new fact. Therefore, the amendment sought for by the petitioners is not acceptable. This petition is devoid of merits.

In the result, this petition is dismissed. There shall be no cost.

Dictated to the Steno-Typist, typed on computer, corrected, print out was taken and pronounced by me in the open court, on this 28th day of March 2024.

Principal Subordinate Judge,
Villupuram.

Petitioner's side Witness and Exhibits: -
NIL.

Respondent's side Witness and Exhibits : -
NIL.

Principal Subordinate Judge,
Villupuram.