

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2015

CORAM:

THE HONOURABLE **MS. JUSTICE R. MALA**

Rev. Application No.113 of 2014

in

C.R.P.No.1650 of 2014

Date of Reserving the Order	Date of Pronouncing the Order
10.07.2015	15.07.2015

1.M.Parameshwari

2.E.Rajakumari

.. Petitioners/Petitioners

Vs.

1.R.Sampath

2.S.Selvamani

3.A.N.Padmanaban

4.M.Baskar

5.The Executive Officer
Perungalathur Town Panchayat
Chennai

6.The Member Secretary
Chennai Metropolitan Development Authority (CMDA)
Thalamuthu Nadarajan Building,
Chennai – 8.

- 7.The Tahsildar
Tambaram Taluk, Chennai.
- 8.The Village Administrative Officer
Perungalathur Village, Tambaram Taluk.
- 9.The Sub Registrar
Padappai
Sriperumbudur Taluk.
- 10.The Assistant Engineer
Tamil Nadu Electricity Board
(Distribution and Maintenance)
Perungalathur, Chennai.

..Respondent/ Respondents

Prayer:

Review Application has been filed against the order dated
30.04.2014 made in C.R.P.No.1650 of 2014.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.Jothi,
for Mr.M.C.Govindan, for R4
Mr.M.Balasubramanian, for R1
Mr.P.Sanjai Gandhi, for R5
R2, R3, R6 to R10 – No Appearance

ORDER

The present review application has been filed against the order dated 30.04.2014 made in C.R.P.No.1650 of 2014 stating that there is an error apparent on the face of the record. In paragraph 11 of the Order it was held as follows:

"11. In such circumstances, I am of the view that the revision petitioners are not entitled to amend the plaint. Furthermore, the Trial Court has rightly considered the facts that the petitioners/plaintiffs, only with a view to defraud the purchasers and to prevent them from enjoyment of the suit properties had filed the objector application in the execution petition and after the same ended against the petitioners/plaintiffs, they have come forward with the present application."

2. The learned counsel for the petitioners would submit that the objector application in the execution petition is still pending, but this Court had held that "the petitioners/plaintiffs only with a view to defraud the purchasers and to prevent them from enjoyment of the suit properties had filed the objector application in the execution

petition and after the same ended against the petitioners/plaintiffs, they have come forward with the present application”, which is an error apparent on the face of the record. Hence, the learned counsel for the petitioners prayed for reviewing the order passed by this Court.

3. The learned counsel appearing for the 4th respondent would fairly concede that the objector application is still pending and the same was also specifically mentioned in the order passed by the Trial Court. However, the learned counsel would further submit that only with a view to drag on the proceedings, the application for amendment of the plaint has been filed with entirely different facts. So, the learned counsel for the respondent prayed for dismissal of the present application.

4. Considered the rival submissions made by both sides and perused the typed set of papers.

5. In the plaint it was stated that the suit properties originally belong to one Rama Reddy and he was having four sons viz., Babu Reddy, Venkata Perumal Reddy, Narasimalu Reddy and Narayana Reddy. The plaintiffs father one Rama Reddy is the son of Venkata

Perumal Reddy. Narayana Reddy died unmarried. Narasimalu Reddy died in the year 1923 leaving behind his wife Ramakkal and daughter Seethammal. During those days, the female children are not entitled to any right in the property. So, the avement in the plaint has to be amended. Hence, he filed an application for amendment of the plaint. The Court without considering the pendency of the objector application has dismissed the plea for amendment. Hence, he prayed for reviewing the order passed by this Court.

6. The review petitioners herein has filed the suit for the following reliefs:

"(i) A declaration, declaring the sale-deed in document No.4177/2006, dated 19.07.2006 executed by the 3rd Defendant in favour of the 4th Defendant is illegal, null and void, ab-initio, and the same does not bind the plaintiff's family or any other co-shares in any manner, and for a consequential injunction restraining the Defendants 3 and 4 or their men, agents or servants of assigns from in any manner interfering with plaintiff's peaceful possession and enjoyment of the suit property, either by trespass or otherwise, on the strength of the Sale-deed dated 19.07.2006 Document No.4177/2006.

(ii) A permanent injunction restraining the 5th and 6th Defendants from granting any building plan approval in favour of the 4th Defendant or his agents or assigns in respect of the suit property on the strength of the sale-deed dated 19.07.2006.

(iii) A permanent injunction restraining the 7th and 8th Defendants from mutating name of the 4th Defendant in the Revenue Records in respect of the Suit property on the strength of the Sale-deed in Document No.4177/2006 dated 19.07.2006 in favour of the 4th Defendant.

(iv) A permanent injunction restraining the 4th Defendant. Or his agents or assigns from alienating/encumbering the suit property through the officer of the 9th defendant or otherwise on the strength of the sale-deed dated 19.07.2006 in Document No.4177/2006 dated 19.07.2006 in favour of the 4th Defendant.

(v) A permanent injunction restraining the 10th Defendant from granting any Electricity connection in favour of the 4th Defendant on the strength of the sale-deed in Document No.4177/2006 dated 19.07.2006 in favour of the 4th Defendant.

And for costs."

7. Admittedly, in the plaint, it has been stated that the suit properties are ancestral properties and it has been partitioned under the partition deed dated 10.03.1923. However, in the application for amendment, it has been stated that they wanted to delete some portions in paragraphs 4 and 5 and add some portion in paragraph 5. But the proposed amendment changes the nature of the case and it is contra to the earlier pleadings and also the cause of action.

8. It is also pertinent to note that when the matter was posted for argument, the application for amendment came to be filed. So, the Trial Court had rightly held that both the application under Order 21 Rule 97 CPC as well as the main suit have to be tried jointly. Mr.N.Jothi, learned counsel appearing on behalf of the fourth respondent would submit that the first respondent Sampath had filed an earlier suit in O.S.No.150 of 1967 for declaration that the alienation in favour of the defendants 1 to 5 is null and void and not binding on the plaintiff. The said suit was dismissed. Thereafter, another suit in O.S.No.104 of 2007 came to be filed between the family members for partition and separate possession, wherein they entered into a compromise. In pursuance of the compromise, they

attempted to take possession and at that point of time, the application under Order 21 Rule 97 CPC came to be filed. Thus, it would clearly prove that the intention of the review petitioners is only to drag on the proceedings.

9. In such circumstances, even though it has been wrongly held that the application under Order 21 Rule 97 has ended, when the same was actually pending, I am of the view that it will not change the finding because once the trial has been completed and when the matter was posted for arguments, without complying the proviso to Order 6 Rule 17 CPC the present application came to be filed only with a view to drag on the proceedings. In such circumstances, I am of the considered view that the petitioners has not made out any case for review of the order dated 30.04.2014 made in C.R.P.No.1650 of 2014 and hence, the review application is liable to be dismissed.

10. In fine, the review petition is dismissed. No costs.

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15.07.2015

R.MALA, J.

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Pre-Delivery Order made in
Rev. Application No.113 of 2014
in
C.R.P.No.1650 of 2014

Dated : 15.07.2015