

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3566 of 2014

and

M.P.No.1 of 2014

Padmanaban

.. Petitioner

Vs

1.S.Murugan

2.V.Boopathy

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 29.04.2011 made in I.A.No.128 of 2011 in O.S.No.1 of 2004 on the file of the Subordinate Court, Kancheepuram.

For Petitioner : Mrs.A.Sumathy

For Respondents : Mr.Y.Jyothish Chander

ORDER

The Civil Revision Petition is filed against the order dated 29.04.2011 made in I.A.No.128 of 2013 in O.S.No.1 of 2004 on the file of the Subordinate Court, Kancheepuram.

2.The petitioner as a plaintiff filed a suit in O.S.No.1 of 2004 for specific

performance on the basis of the sale agreement dated 26.04.2003. During the pendency of the suit, he came to know that the suit property has been sold to the second defendant. Hence, he filed an application to implead him as party to the proceeding and that application was allowed. Consequentially amendment petition has been filed and at that time, he has not averred in respect of how he is a necessary party and in cause of action. After commencement of trial and after examination of P.W.1, the petitioner/plaintiff filed I.A.No.128 of 2011 for amendment. The Trial Court after hearing the objection raised by the respondents/defendants has dismissed the application. Against which, the present Civil Revision Petition has been filed.

3.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4.Learned counsel for the petitioner submitted that after filing of the suit and written statement only the petitioner/plaintiff came to know that the suit property has been sold to the second defendant. Hence, he was forced to file an application for impleading him as a party to the proceeding to obtain a binding decree and that application was allowed. While filing the consequential amendment petition, he has not stated as to how the second

defendant is a proper and necessary party and cause of action. So, to rectify the same, he filed the present application. That factum was not considered by the Trial Court. He further submitted that it is true that while filing the amended plaint copy, cause of action and second defendant's name has been written in hand which will not take away the rights of the petitioner filing this application. Hence, he prayed for setting aside the order passed by the Trial Court.

5.Resisting the same, the learned counsel for the respondents would submit that amendment now sought for is barred by limitation. He further submitted that the sale deed executed in favour of the second defendant is sham and nominal and it is barred by limitation. The Trial Court has rightly considered the same in paragraph No.6 of the impugned order. Hence, he prayed for dismissal of the revision petition.

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.The petitioner as a plaintiff filed a suit for specific performance on the basis of the sale agreement dated 26.04.2003 for Rs.1,38,700/- and an advance amount of Rs.20,000/- has been given. After issuance of notice on

10.10.2003, the suit has been filed which was taken on file in O.S.No.1 of 2004. After filing of the written statement by the first defendant, he came to know that the suit property was already sold to the second defendant and written statement has been filed on 29.12.2004. Thereafter, he filed an application for impleading the second defendant as party to the proceeding and that application was allowed. So, it is true that while filing the consequential amendment application, the petitioner ought to have stated as to how the second defendant is necessary. But admittedly he has not mentioned the same in the consequential application. After commencement of the trial only, he came to know of the fact and he filed an amendment application. It is true that after amendment of CPC Order VI Rule 17, application shall not be allowed after commencement of trial unless he has proved with due diligence that he is unable to obtain the particulars. It is well settled dictum of the Hon'ble Apex Court that laws are man made laws and for sheer technicalities the Court shall not shut down the remedy to the parties and for dispensing the substantial justice amendment has to be allowed. So, I am of the view that to render substantial justice amendment now sought for is necessary. That factum was not considered by the Trial Court. Hence, the impugned order passed by the Trial Court is hereby set aside and the Civil Revision Petition is hereby allowed.

8. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

9. At this juncture, the learned counsel for the respondents sought for early disposal of the suit. Considering the request made by the learned counsel for the respondent and since already written statement has been filed by the second defendant and the suit is in part heard stage, the Trial Court is directed to dispose of the suit in O.S.No.1 of 2004 within three months from the date of receipt of a copy of this order after carrying out the amendment and also directed to give opportunity to the defendants to file additional written statement, if any.

10.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Subordinate Court, Kancheepuram.

R.MALA. J.,

cse

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