

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.2560 of 2011

And

M.P.No. 1 of 2011

Chitra

...Petitioner/Plaintiff/Petitioner

Vs.

Kannan

...Respondent/Defendant/Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order as made in I.A.No. 2245 of 2010 in O.S.No. 40 of 2008 dated 9.11.2010, on the file of the IIIrd Additional District Munsif, Kallakurichi, dismissing the application filed under Order VI Rule 17 of C.P.C.

For Petitioner : Mr.R.Bharanidharan

For Respondent : Mr.P.Valliappan

ORDER

This Revision has been filed under Article 227 of the Constitution of India questioning the legality of the order dated 09.11.2010 made by the trial Judge, namely, the learned 3rd Additional District Munsif,

Kallakurichi, in I.A.No. 2245 of 2010 in O.S.No. 40 of 2008 on the file of the said Court.

2. The petitioner herein is the plaintiff in the above said suit and the respondent herein is the sole defendant in the said suit. The suit came to be filed by the revision petitioner for a bare perpetual injunction not to interfere with her peaceful possession and enjoyment of the suit property (immovable property) described in the plaint schedule. The claim was based on the plaint averment that she purchased the property from the rightful owner by a sale deed dated 21.08.2002 and that ever since the purchase, she had been in possession and enjoyment of the same. No averment was found incorporated in the plaint indicating that the title of the plaintiff was in dispute. Hence, the suit was valued under Section 27(c) of the Tamilnadu Court Fees and Suit Valuation Act 1955.

3. The respondent herein / sole defendant, who entered appearance after receiving summons, filed a written statement on 10.04.2008. In the written statement, he denied and disputed not only the plaintiff's possession and enjoyment of the suit property as claimed by her in the plaint, but also the title of the revision

petitioner/plaintiff. Of-course, thereafter for about 2 years, the revision petitioner/plaintiff did not come forward with an application to amend the plaint so as to include a prayer for declaration of title. While preparing the case for trial, as per the legal advise received by her, I.A.No. 2245 of 2010 came to be filed under Order 6 Rule 17 CPC for amendment of the plaint by including an additional prayer for declaration of title and also a paragraph in the plaint narrating how the petitioner herein/plaintiff would trace her title.

4. The petition was resisted on the grounds (1) that the petition was belated; (2) by the proposed amendment, the scope of the suit was sought to be enlarged; and (3) the nature of the suit itself was sought to be changed. The learned trial Judge after hearing by an elaborate order which is impugned in this revision, dismissed the said petition sustaining the above said contentions raised by the respondent herein/defendant.

5. It is the contention of the learned counsel for the petitioner that the Court below committed an error in holding that the amendment petition was belated, without taking into consideration the fact that the prayer for amendment was necessitated by the stand

taken by the respondent herein/defendant denying the title of the petitioner herein/plaintiff in respect of the suit property. The further contention of the learned counsel for the petitioner is that the proposed amendment of the plaint, by including an additional prayer for declaration of title and by incorporating necessary pleadings as to how the petitioner/plaintiff would trace her title to the suit property, would not enlarge the scope of the suit, in so far as the suit for injunction based on title would necessarily involve a question of title when the title of the plaintiff is disputed by the defendant. According to the submissions made by the learned counsel for the petitioner, this aspect was not taken into consideration by the learned trial Judge. The next contention of the learned counsel for the petitioner is that the finding of the Court below that the nature of the suit itself was sought to be changed by the proposal, amendment can not be countenanced.

6. Per contra the learned counsel for the respondent would contend that the suit for declaration is governed by Article 58 of the Limitation Act or in the alternative, governed by Article 113 of the Limitation Act and that the petition for amendment filed by the revision petitioner / plaintiff, much after the filing of the written statement, would be an attempt to get over the bar provided under the Limitation

Act for seeking a declaration. In support of his contention, the learned counsel for the respondent relied on the Judgement of a learned Single Judge of this Court in ***Lalitha and Others Vs. Manujothi Ashramam represented by its President and Others*** reported in **2011 (2) CTC 28**.

7. This Court paid its anxious consideration to the rival submissions made by the learned counsel appearing on both sides and also considered the relevant provisions of the Limitation Act 1963, Tamilnadu Court Fees and Valuation Act 1955, Specific Relief Act 1963 and the Judgment relied on by the learned counsel for the respondent.

8. Order VI Rule 17 of C.P.C reads as follows:-

"17. Amendment of Pleadings :- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all suit amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. "

9. Rule 17 empowers the Court to allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and necessary for the purpose of determining the real question in controversy between the parties seek amendment can be allowed at any state of the proceedings. However the proviso attached to the said rule says that no application for amendment shall be allowed after the trial has commenced. But such an embargo is not absolute and it is subjected to a ridden that such amendments can be allowed at a stage after the trial has commenced provided the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

10. Here is a case, in which the revision petitioner who filed the suit as the plaintiff, could have very well proceeded with the trial of the case without even seeking the proposed amendment. Since the

title of the plaintiff based on which the relief of injunction has been sought for is disputed by the respondent herein/defendant, the question of title has got to be gone into incidentally by the trial Court. In case, the trial Court ultimately come to the conclusion that the question of title cannot be resolved with convenience in the suit for injunction which has to be tried summarily, the result shall be not to drive the petitioner/plaintiff without any remedy on the ground that she has not sought for declaration of title. In such an eventuality, the Court has to relegate the plaintiff to a more comprehensive suit for declaration and injunction or other reliefs. It has been held so in ***Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by L.Rs & Others*** reported in **2008 (6) CTC 237**.

11. No provision of law enjoining a duty on a person, seeking other reliefs to seek a declaration as a condition precedent for getting the other reliefs sought for. Even in the Specific Relief Act 1963, section 34 makes it optional to seek a declaration of title against the person disputing title. The employment of the word "may" under Section 34 shall make it clear. The proviso to Section 34 of the Specific Relief Act says that no Court shall make any such declaration, where the plaintiff, being able to seek further relief than mere

declaration of title, omits to do so. Similar qualifying provisions are not found in Chapters VII and VIII of the Specific Relief Act 1963 dealing with injunctions.

12. Though the learned counsel for the respondent referred to Articles 58 and 113 of the Limitation Act, he was not able to demonstrate as to how the prayer for declaration would be out of the period of limitation. When already a suit for injunction, which involves the question of title, has been filed admittedly within time, there shall be no question of the bar of limitation being attracted for seeking the relief of declaration, more so during the pendency of the suit for injunction. Even assuming that separate period of limitation can be applied in respect of the prayer for declaration, the right to sue for declaration arose only on the filing of the written statement of the respondent containing averments denying the title of the petitioner herein. Within three years thereafter, the application for amendment of the prayer came to be filed. By no stretch imagination, it can be contended that the prayer for amendment is beyond the period of limitation.

13. So far as the enlargement of the scope of the suit and the alleged alteration of the nature of the suit are concerned, the above said discussions shall be enough to demonstrate that there is no enlargement of the scope of the suit except elucidation of issue in controversy by seeking a specific prayer for declaration of title. The nature of the suit does not get changed by the introduction of the prayer for declaration. The petitioner shall have to pay Court fee under Section 25(b) of the Tamilnadu Court Fees and Valuation Act, 1955 if the prayer is amended. Whereas substantially the same shall be the result if an issue regarding title based on the plea raised by the respondent/defendant is framed as an issue even without a prayer for declaration in which event the Court fee shall be paid under Section 27(a)(2) of the Tamilnadu Court Fees and Suits Valuation Act. The end results shall be one and the same because the Court fee to be collected shall be on half of the value of the property which is the subject matter of the suit.

14. So far as the inclusion of a paragraph in the plaint narrating how the plaintiff would trace her title is concerned, it shall be more helpful to the respondent/defendant to have the scope of the plea made by the plaintiff in support of her claim for title expressly

stated. Even without such a plea, based on the denial of title made by the defendant, the plaintiff can adduce evidence in support of her claim that she derived valid title. Besides throwing light on the issue, the proposed amendment would lend help to the Court to know the real issue in controversy and decide the same in the present suit itself thereby avoiding multiplicity of proceedings. The Judgement relied on by the learned counsel for the respondent can be distinguished on facts and the same also will not be, in any way, helpful to the case of the respondent.

15. For all the reasons stated above, this Court comes to the conclusion that the trial Court has failed to exercise the jurisdiction conferred on it and it is a fit case in which the order of the trial Court has to be corrected by this Court in exercise of its power of Superintendence over the Subordinate Courts under Article 227 of the Constitution of India.

16. In the result, the revision succeeds and the same is allowed. The petitioner shall be permitted to carry out the amendment as prayed for in the amendment petition within two weeks from the date of receipt of a copy of this order and pay the deficit Court fee as

per the new valuation slip attached consequent to the amendment of the plaint. The trial Court shall make an endeavour to dispose of the suit as early as possible, in any event not later than 4 four months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

30.01.2015

Index: Yes/No
Internet: Yes/No

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To

3rd Additional District Munsif, Kallakurichi.

P.R.SHIVAKUMAR. J.,

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