

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.10.2015**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.4506 of 2014

1. Ramasamy Gounder
2. Rajeswari : Petitioners
versus

Dineswaran : Respondent

PRAYER: Revision filed against the order dated 27.1.2014, in I.A.No.1111 of 2013, in O.S.No.123 of 2008, on the file of the Principal District Munsif Court, Tiruchengode.

For petitioners : Mr.P.Valliappan

For respondent : Mr.K.Ramasamy

ORDER

The order passed by the learned Principal District Judge, Tiruchengode, allowing the application filed by the plaintiff to amend the plaint is challenged in this Civil Revision Petition at the instance of the defendants, primarily on the ground that similar application filed earlier was dismissed as not pressed and as such, a fresh application is barred by the principles of *res judicata*.

Facts in nutshell:-

2. The guardian of the respondent filed a civil suit in O.S.No.123 of 2008, before the Principal District Munsif, Tiruchengode, praying for a decree of permanent injunction restraining the petitioners herein from interfering with the peaceful possession and enjoyment of the property. The

suit was contested by the petitioners by filing written statement. The application filed by the respondent through guardian to amend the plaint was dismissed as withdrawn. Thereafter, on attaining majority, the respondent filed a fresh application in I.A.No.1111/2013, praying for an order to amend the plaint for the grant of a decree of declaration. The application was contested by the petitioners.

3. The learned Trial Judge opined that the guardian should have filed the suit for declaration in view of the denial of title. The learned Trial Judge was of the view that the respondent has made out a case for amendment of plaint. The objection raised by the petitioners on the ground of res judicata was turned down as the earlier decision was not on merits. Feeling aggrieved by the order dated 27 January 2014, the unsuccessful respondents in I.A.No.1111/2013 are before this Court.

Summary of submissions:-

4. The learned counsel for the petitioners submitted that since the earlier application was dismissed as withdrawn, no fresh application would be maintainable on the very same ground. According to the learned counsel, similar relief was prayed by the respondent in his earlier application in I.A.No.967 of 2013. While considering the subsequent application, the learned Trial Judge overlooked the fact that similar application is not maintainable at a later point of time. No other contentions

were raised by the learned counsel to invalidate the order under challenge.

5. The learned counsel for the respondent justified the impugned order. According to the learned counsel, the petitioner was a minor when the application in I.A.No.967 of 2013 was filed and it was only after attaining majority, the present application was filed. The learned counsel contended that the earlier decision was not on merits and as such, it would not operate as *res judicata*.

Discussion:-

6. The suit in O.S.No.123 of 2008 was preferred by the guardian of the respondent. It was a suit for injunction. The suit was opposed by the petitioners by filing written statement. The petitioners have taken up a plea that the first petitioner is the absolute owner of the suit properties. In short, the petitioners have disputed the title claimed by the respondent.

7. The respondent through his guardian, earlier filed an application in I.A.No.967 of 2013 for amendment of plaint. The respondent wanted cancellation of the gift settlement deed dated 4 June 2007 and a decree of declaration in respect of the suit property. When the matter was taken up for enquiry, the the trial Court appears to have made an observation that the amendment application is defective. The learned counsel for the respondent made an endorsement not pressing the application in view of

the defects pointed out by the Court. Accordingly, the Trial Court dismissed the application as not pressed.

8. The respondent attained majority subsequently. Thereafter, he filed a fresh application in I.A.No.1111/2013 for amendment. It is true that similar prayers were made earlier by the respondent. The question therefore is as to whether the respondent is legally entitled to file a second application in view of the earlier order dismissing the amendment application as withdrawn.

9. Though the respondent, through his guardian, wanted amendment of plaint, seeking the relief of declaration, there was no consequential amendment with regard to valuation. This was pointed out by the Trial Court and the same made the respondent to withdraw the application. There was no adjudication at all on merits. It is true that there was no liberty granted by the Trial Court to file a fresh application. However, in a case of this nature, the Court should look into the totality of facts and circumstances of the case and decide as to whether subsequent application is maintainable. The respondent was a minor when the earlier application was filed. The Court only pointed out the procedural defect, resulting in withdrawing the application. The mistake committed by the guardian should not cause prejudice to the minor. The respondent immediately after attaining majority filed a fresh application for amendment.

The learned Trial Judge exercised his discretion legally and allowed the application. It is not as if the issue regarding maintainability of second application was not considered by the learned Trial Judge. In fact, the learned Judge answered the said issue by giving cogent reasons. It is not for this Court to substitute its views acting like an Appellate Court. I am therefore of the view that the learned trial Judge was correct in allowing the application.

10. In the upshot, I dismiss the revision petition. No costs. Consequently, miscellaneous petitions are also dismissed.

30.10.2015

Index:Yes/no
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To
The District Munsif Court, Tiruchengode

K.K.SASIDHARAN, J.

(tar)

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