

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1156 of 2012

and

M.P.No.1 of 2012

Vijayalakshmi
W/o.Muralidharan

... Petitioner

vs.

1.Sadaopan
2.Gangadharan

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the Principal District Munsif Court at Kallakurichi dated 30.01.2012 made in I.A.No.3041 of 2011 in O.S.No.322 of 2009.

For Petitioner : Mr.S.M.S.Shriram Narayanan

For Respondent : Mr.R.Venkatajalapathy
for Mr.K.Sasindran

ORDER

The plaintiff in the original suit O.S.No.322 of 2009 on the file of the Principal District Munsif, Kallakurichi is the petitioner in the present revision. She filed the above said suit against the respondents for bare injunction claiming that she is the absolute owner of the suit property and the respondents herein are trying to disturb her peaceful possession and enjoyment of the same. The respondents contested the suit by filing a written statement disputing the title of the petitioner in respect of the suit property among other contentions.

2. The trial in the suit had begun and evidence on the side of the plaintiff was over. At the time of cross examination of DW1, the revision petitioner/plaintiff filed an application in I.A.No.3041/2011 seeking permission to amend the plaint to incorporate a prayer for declaration of title and the valuation and court fee column in the plaint. The said petition was resisted by the respondents herein/defendants contending that the amendment sought for could not be allowed, as trial of the suit had already begun and it could not be contended that the petitioner/plaintiff was diligent enough and still she was not able to raise the matter before the commencement of the trial.

3. The learned Principal District Munsif, Kallakurichi, after hearing both sides, discountenanced the contention of the revision petitioner herein/plaintiff and dismissed the application filed under Order VI Rule 17 CPC by the impugned order dated 30.01.2012. The legality and sustainability of the said order are questioned in the present revision filed under Article 227 of the Constitution of India invoking the supervisory power of the High Court over the courts subordinate to it.

4. The arguments advanced by Mr.S.M.S.Shriram Narayanan, learned counsel for the revision petitioner and Mr.R.Venkatajalapathy, learned counsel appearing for Mr.K.Sasindran, counsel on record for the respondents are heard. The impugned order and other papers produced in the form of typed set of papers are also perused.

5. The petitioner/plaintiff is a woman, who depends upon the legal advice tendered by her counsel. As contended by the learned counsel for the petitioner, she filed the suit hoping that her title would not be disputed. Though the respondents/defendants on their appearance filed a written statement denying and disputing the title of the petitioner/plaintiff, she was not getting proper advice that she had to amend the plaint to make the suit into one for declaration of title and injunction in the light of the contention raised by the respondents/defendants. Only at a later stage, she got the legal advice to the said effect. By the proposed amendment, the petitioner herein/plaintiff is not trying to make any new plea and on the other hand, based on the plaint averments already made, she wants to include an additional prayer, namely declaration of title in addition to the prayer for injunction.

6. It cannot be said that the prayer for declaration stands barred by limitation, in which event the respondents shall have a valid defence. Though a suit for bare injunction cannot be dismissed on the ground that the title of the plaintiff is in dispute and she/he has not chosen to seek declaration of title and in the appropriate cases court can go into the question of title incidentally, it shall not preclude the possibility of the prayer for injunction being negatived and thereby relegating the plaintiff to a more comprehensive suit for declaration and consequential reliefs. Perhaps, the advice tendered to the petitioner/plaintiff was that the issue of title was simple capable of being resolved in a trial of summary nature and

the same was the reason why she did not take steps for amendment of the plaint to include a prayer for declaration before the trial started. However, during the course of the trial, she was made to realise that the issue regarding title would be more complicated and it would be better for her to seek a declaration of title also and thereby avoiding a double jeopardy, namely she being non-suited for the relief of mere declaration and being relegated to a more comprehensive suit for declaration and other consequential reliefs. When such is the case, the plenary power of the court to allow amendment necessary for the purpose of determining the real questions in controversy between the parties has got to be exercised. By doing so, the court can avoid multiplicity of proceedings and pave the way for the final resolution of the dispute in the present suit itself. For the said reasons, this court comes to the conclusion that the provision found in Order VI Rule 18 of the Code of Civil Procedure has got to be applied with some elasticity rather than rigidity, solely for the purpose of determining the real questions in controversy between the parties.

7. The learned trial judge could have considered the same and allowed the prayer for amendment and at the same time, directed compensation of the respondents with cost for the delay. As the trial judge has not done it, this court deems it appropriate to interfere with the order of the trial court, set aside the same and allow the amendment prayed for by the petitioner with a direction to the petitioner to compensate the respondents by way of cost.

In the result, the civil revision petition is allowed. The impugned order of the trial court dated 30.01.2012 made in I.A.No.3041 of 2011 in O.S.No.322 of 2009 is set aside. I.A.No.3041/2011 shall stand allowed permitting the petitioner/plaintiff to amend the plaint as prayed for in the petition. The petitioner/plaintiff shall pay a cost of Rs.5,000/- as cost to the respondents/defendants for the delay caused by her. Consequently, the connected miscellaneous petition is closed.

12.03.2015

Index : Yes
Internet : Yes
asr

To

The Principal District Munsif, Kallakurichi

P.R.SHIVAKUMAR, J.

asr/-

C.R.P (PD) No.1156 of 2012
and
M.P.No.1 of 2012

Dated : 12.03.2015