



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27/1/2015

C O R A M

WEB COPY

THE HONOURABLE Ms.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD(MD) No.1765 of 2013

1. Vellaichamy @ Karuppiah

2. Kaliraj ... Petitioners/Respondents/Respondents

Vs

Udayaraj ... Respondent/Petitioner/Plaintiff

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.617 of 2012 in A.S.No.29 of 2010 on the file of the Principal District Judge, Virudhunagar at Srivilliputhur dated 28/3/2013.

For petitioners ... Mr.M.Ashok Kumar

For respondent ... Mr.P.Saravanakumar

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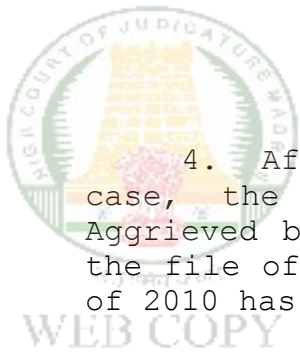
Orders reserved on 7/1/2015

O R D E R

The revision is directed against the order allowing the application under Order 6 Rule 17 of the Civil Procedure Code at the appellate stage. The plaintiff, who had filed the suit for declaration that the suit properties belong to him and for consequential injunction had filed the application under Order 6 Rule 17 of the Civil Procedure Code.

2. The case of the plaintiff is that one Muthulakshmi and Mariyammal are the heirs of Subbaiya Thevar and Subbammal were in joint possession of the suit properties. The plaintiff had purchased the suit schedule properties on 17/4/2007 from Muthulakshmi and on the same day, Mariyammal, who is the mother of the plaintiff had executed a registered gift deed in favour of the plaintiff. Pursuant to the said sale and gift deed, the plaintiff has been in possession of the suit properties. The plaintiff also got the mutation of revenue records effected. As the defendants disturbed the possession, the plaintiff was constrained to file the above suit.

3. The suit was resisted by the defendants denying the allegations made in the plaint. The defendants also denied any right in the suit property for Muthulakshmi and Mariyammal under whom the plaintiff claimed title to the suit property.



4. After elaborate trial, considering the facts and evidence of the case, the Sub-Court, Srivilliputhur dismissed O.S.No.77 of 2008. Aggrieved by the same, the plaintiff has preferred A.S.No.29 of 2010 on the file of the District Court, Srivilliputhur. Pending A.S., I.A.No.617 of 2010 has been filed by the plaintiff for amendment of plaint.

5. The plaintiff had averred in the affidavit filed in support of the petition that the plaintiff was entitled to 80 ½ cents in S.No.270/1, six cents in S.No.270/3 and 1/4th share in the well in S.No.270/1 under the sale deed dated 17/4/2007 executed by Muthulakshmi. The plaintiff also claimed another 80 ½ cents in S.No.270/1, six cents in S.No.270/3 and 1/4th share in the well situate in S.No.270/1 under the gift settlement deed executed by his mother Mariyammal. In all, under both the sale deed and gift settlement deed, the plaintiff claimed 1.61 cents in S.No.270/1, 12 cents in S.No.270/3 and ½ share in S.No.270/1. However, in the plaint the plaintiff has shown all the three items of property as follows:-

In S.No.270/1 - 80 ½ cents on the north

In S.No.270/3 - 6 cents on the north and

In S.No.270/1 - ¼ share in the well and the well is in the suit pathway.

Therefore, the present application for amendment is filed by the plaintiff alleging that the property described under one of the documents has been left out in the plaint inadvertently and that the plaint has to be amended.

6. The application was resisted by the defendants/respondents contending that the amendment itself is not maintainable as it is trying to introduce new facts and new property to the suit.

7. The defendants further contended that the revenue records will not confer title and that the plaintiff cannot face his claim on the same. In addition, the suit itself was dismissed on 28/6/2010 and the appeal was filed on 12/11/2010. Now, the plaintiff has come up with the application at a belated stage for amendment which is not maintainable.

8. The Principal District Judge, Virudhunagar, who tried the application, allowed the same on payment of Rs.1,000/- to the defendants. Aggrieved by the same, the defendants had come up with the Civil Revision Petition.

9. The only question that has to be seen whether the order of the District Judge is sustainable.

10. It is pointed out by the learned counsel for the defendants that in the judgment of the trial Court, there is a categorical finding that Muthulakshmi and Mariyammal from whom the plaintiff derives title are not proved to be the heirs of Subbaiya Thevar and Subbammal. Therefore, the claim of the plaintiff under Exs.A.2 and A.3 from Muthulakshmi and Mariyammal are not valid. As revenue records viz., patta is not a document of title, the suit of the plaintiff was dismissed. While so, claiming that the suit property under one of the



documents have been left out in the original plaint cannot be added at the appellate stage.

11. It is further contended by the petitioners that any amendment post trial itself cannot be allowed, but the plaintiff is seeking to amend the plaint at the first appellate stage ought not have been entertained. Any amendment can be allowed that may be necessary for determining the real question in controversy between the parties provided he does not cause any injustice or prejudice to other side. The plaintiff had not been diligent in making an application for amendment before the commencement of the trial. The 'pre-trial' amendments are dealt with liberally by the Courts. 'Pre-trial' means before recording of evidence, hearing of the arguments etc. In the case on hand, the amendment is sought at the appellate stage after the suit has been dismissed. When the very claim of the plaintiff is based on Exs.A.2 and A.3, the plaintiff ought to have been vigilant enough to carry out the amendment at the earliest point of time. If the amendment is allowed to stand, it would cause great prejudice to the defendants as the same would take away the right that had accrued to the defendants. For all these reasons, I find no option but to set aside the order of the lower Court.

12. In the result, this Civil Revision Petition is allowed. The order of the learned District Judge, Srivilliputhur is set aside and I.A.No.617 of 2012 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (A.E)

/True copy/

Sub Assistant Registrar

To

The Principal District Judge,
Virudhunagar at Srivilliputhur

+ 1 cc to Mr.M.Ashokkumar, Advocate, SR.No.3467

+ 1 cc to Ms.C.Jaya Indra Patel, Advocate, SRNo.3814

Order in
C.R.P.PD (MD) No.1765 of 2013

27/1/2015

mvs.

RJ/21.2.15

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