

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

CRP PD 1425 of 2014
and
M.P.No.1 of 2014

Perumal ... Petitioner

Vs

Kuppannan ...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 23.09.2013 passed in I.A.No.1897 pf 2012 in O.S.No.910 of 2005 on the file of the learned I Additional District Munsif, Coimbatore.

For Petitioner :: Mr.S.Swaminathan
For Respondent :: Mr.S.Kadarkarai

O R D E R

The plaintiff has filed the above revision challenging an order refusing the plaintiff to amend the plaint under Order 6 Rule 16 and 17 CPC.

2.Heard both sides.

3.Originally, the suit has been filed for declaration that the plaintiff as the absolute owner of the property of 7 cents as per agreement dated 13.10.1978 entered into between the plaintiff and his vendor one Ramakkal. However, in the amendment application in IA No.1897 of 2012, the plaintiff is seeking to insert the prayer directing the defendant to execute the sale deed in the suit in respect of remaining 7 cents of the property mentioned in the suit schedule as per oral agreement dated 13.12.1978 between the plaintiff and the defendant.

4.Originally, one Ramakkal is owner of the property of 14 cents. The plaintiff purchased 4 cents out of the same. As the plaintiff was not able to purchase the balance, the defendant who is the plaintiff's own brother, purchased the same. The defendant is said to have agreed to convey the property in favour of the plaintiff as and when the plaintiff paid the sale consideration. It is also stated that the defendant had conveyed 3 cents in favour of the plaintiff's wife. Now there is remaining 7 cents with the defendant which according to the plaintiff, the defendant has to convey it to him. Though it has been stated so in the plaint, so far as cause of action prayer is concerned, there is no mention about such an agreement entered into between the plaintiff and the defendant dated 13.12.1978.

5.While so, the plaintiff is now seeking to amend the prayer for declaration that he is the absolute owner of 7 cents and for specific performance against the defendant to execute the sale deed based on agreement dated 13.12.1978. It is also pointed out by the learned counsel for the respondent that as early as in 2005, written statement has been filed by them pointing out that the suit should be one for specific performance and not for declaration. However, the plaintiff has filed the amendment application only in the year 2012. Even otherwise, the said Ramakkal has not been made as party to the suit. Though an oral agreement was pleaded in the original plaint, now in the amendment, an agreement dated 13.12.1978 is introduced. The suit original prayer is based on the oral agreement between the plaintiff and Ramakkal dated 13.10.1978 whereas in the amendment, the relief for specific performance is sought for based on the agreement dated 13.12.1978 between the plaintiff and the defendant.

6.After contest, the learned trial judge dismissed the application on the following grounds:

a) The original suit is for declaration and permanent injunction. Now the amendment is sought for suit for specific performance based on the written agreement, which has not been disclosed in the cause of

action paragraph;

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b) The evidence on both sides are over and it is a post trial amendment;

Even assuming that the amendment should be allowed the agreement is of the year 1978 and the suit is filed only in the year 2005 which is after expiry of 35 years and the same is clearly barred by limitation. If the amendment prayed for is allowed, it would not only change the structure of the suit but would introduce a new cause of action which is not pleaded earlier. The amendment if allowed would cause serious prejudice to the defendant which cannot be compensated in monetary terms. Therefore, the application was rightly dismissed by the learned trial judge which does not suffer from any infirmity. For the above reasons, the civil revision petition is dismissed. No costs. The connected miscellaneous petition is also dismissed. The connected miscellaneous petition is also dismissed.

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To
The Additional District Munsif,

Coimbatore.

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