

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08..11.2016**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

Application No.450 of 2016

in

C.S.No.575 of 2013

P.A.Abhinand

.. Applicant

Vs

1. P.R.Nataraja Krishnan
2. P.N.Radhakrishnan
3. P.N.Kamalakrishnan
4. The Collector of Chennai
Chennai District, Chennai.
5. The Tahsildar
Mylapore-Triplicane Taluk
Chennai 600 028.
6. The Commissioner
Corporation of Chennai
Chennai 600 003.
7. The Zonal Officer
Zone-IX, Corporation of Chennai
Chennai.

.. Respondents

Prayer: Application filed under Order XIV Rule 8 of O.S.Rules r/w Order VI Rule 17 of the Code of Civil Procedure, seeking to add the reliefs, after the prayer.

For Applicants : Mr.G.Mohanarangan

For Respondents: Mr.Ram and Rajan
for RR1 to 3

ORDER

This application is filed by the applicant/plaintiff seeking amendment to the plaint by introducing an additional prayer and for payment of additional court fees.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking in the suit.

3. The case of the plaintiff is as follows:

(a) The suit was originally filed for a declaration declaring that the assessment of property tax made in favour of the first defendant, by defendants 6 and 7 as null and void and consequently to direct the defendants 6 and 7 to effect transfer of the property tax assessment in the name of the plaintiff and for a direction to defendants 4 and 5 to issue patta in favour of the plaintiff, with respect to the suit property etc.

(b) The suit property originally belonged to the joint family, managed by P.N.Radhakrishnan and P.A.Ananthakrishnan. The aforesaid P.N.Radhakrishnan died intestate on 11.05.1955 and the said P.A.Ananthakrishnan became the kartha of the Hindu joint family. P.N.Radhakrishnan had a son P.R.Natarajakrishnan, who is the first defendant herein and his two sons, are the defendants 2 and 3. Likewise, the said P.A.Ananthakrishnan had died on 12.01.1999, who had a son by

name P.A.Adhivarman, who had left behind a son, viz., P.A.Abhinand, the plaintiff herein and a daughter. Therefore, the suit property belong to all of them as a joint family property. While so, it is stated that for the sake of convenient enjoyment, the front portion of the suit property measuring an extent of 2355 sq.ft. along with an undivided common passage was allotted to the branch of P.A.Ananthakrishnan and the property bearing Door No.174 measuring an extent of 3089 sq.ft., which is a rear portion with a common passage was allotted to P.N.Radhakrishnan. Accordingly, the parties are in separate possession and enjoyment of their respective properties. The plaintiff, also claim to have obtained a release deed from his father and sister and thus becoming the sole and absolute owner in respect of the portion of the suit property allotted to their branch.

(c) The plaintiff had further stated that for the portion occupied by him, he had applied to effect transfer of property tax and patta in his name, which was objected to by the defendants 1 to 3. However, the plaintiff came to know that the first defendant had clandestinely transferred the name of the property tax assessment in his favour with respect to the portion for which, he is not the owner. As the property tax assessment was issued in the name of the first defendant, the plaintiff was constrained to file the suit declaring the same as void.

4. The defendants 1 to 3 had filed the written statement in the month of July 2014, alleging that the father of the first defendant,viz.,

P.N.Radhakrishnan had purchased the entire suit property with his own funds in the year 1941 and he was an assessee till his death in 1955. The defendants also had filed the documents with respect to the property tax, water tax and electricity receipts in the name of D1 since 2005, which was marked as Exs.D5 to D8.

5. The present application has been filed by the plaintiff seeking to add the following reliefs after the prayer (a) in the plaint as (a)(i) and a(ii) and for payment of requisite Court fee:-

(i) for a declaration declaring that the documents, which were marked on the side of the defendants 1 to 3, is not binding on the plaintiff, as the alleged patta, i.e., the extract of permanent land register, which is marked as Ex.P1 is very clear that the plaint schedule property was allotted to the branch of P.A.Ananthakrishnan and the same was recognized by the plaint documents;

(ii) for a declaration declaring that the plaintiff is the absolute owner of the suit property together with the undivided common passage, as the title is disputed and to add in the Court Fee column in Para No.16 of the plaint, the requisite Court fee for such amendments.

6. The above application was opposed by the defendants 1 to 3 by contending that the amendment sought for by the plaintiff, introduce a new

cause of action. It is also stated that the same is barred by limitation. Further, the amendment is after the commencement of the trial and therefore, the same cannot be allowed. The other averments set out in the counter affidavit, relates to the merits of the case.

7. The question that would arise for determination, is whether the amendment sought for by the plaintiff can be allowed?

8. The parties belong to the same family and the dispute is with respect to the division of the joint family property to the two branches. The case of the plaintiff is that there was a division of the property in principle and that they have been enjoying their respective portion of the property with an undivided common passage. Similarly, the defendants are also in enjoyment of a specific property with passage in common. The property tax assessment in favour of the first defendant had triggered of the suit. Hence, the original suit relief was for a declaration that the assessment was not binding on the plaintiff. However, in the written statement, it is specifically stated that it is the first defendant's father, who had purchased the suit property from out of his own funds in the year 1941 and he had been in enjoyment of the same till his death in 1955. As the title of the plaintiff had been denied, specifically in the written statement, it is necessary for the plaintiff to amend the plaint by including the relief of declaration.

9. While deciding the application for amendment,

- Firstly, it is for the Court to see as to whether these amendments are proper and effective for the adjudication of the case.
- Secondly, it has to be seen, whether the amendment is *bona fide*.
- Thirdly, the amendment sought for, if allowed, should not cause prejudice to the other side, which cannot be compensated adequately in terms of money.
- Fourthly, the refusal of the amendment would cause irreparable loss to the plaintiff leading to injustice.
- Fifthly, the Court has to see whether the amendment, changes the nature of the case and introduces a new cause of action.

10. As stated earlier, in the instant case, it is only, in response to the written statement, wherein the title of the plaintiff is denied, the present application has been filed for amendment. The written statement has been filed by the defendants 1 to 3, as early as in July 2014; whereas the present application is filed only in October 2015. From the perusal of the records, it is seen that the written statement itself was filed with a delay and the parties were sent for trial. Only after the commencement of the trial, the above application is filed.

11. As a general rule, the Court should decline amendments, if fresh suit on the amendment claim, would be barred by limitation on the date of the application.

12. The suit has been laid by the plaintiff on the presumption that it is a joint family property and the enjoyment of the same was based on the

convenience of the parties. However, the denial of the plaintiff's right was made only in the written statement, immediately after which the amendment application has been filed.

13. Though there are two reliefs asked for in the application, the relief sought for under prayer (a)(i), which is a declaration to declare that the documents filed under Exs.D5 to D8 viz., property tax assessments, water tax and Electricity receipts, produced by the defendants 1 to 3 are not binding on the plaintiff, may not be possible, as the documents are produced only during the trial of the suit and the prayer cannot be introduced based on the same.

14. Insofar as the amendment sought for under (a)(ii) is concerned, it is with respect to the declaration of the title of the suit property. If the amendment is not allowed, any subsequent proceeding that may be initiated by the plaintiff would be a bar under Order II Rule 2 of the Code of Civil Procedure. Hence, in the interest of justice, the amendment sought for to introduce prayer a(ii) has to be allowed.

15. As discussed earlier, having introduced the claim of declaration of title, at the belated stage, after the commencement of trial though the plaintiff could have filed it immediately, after filing of the written statement, the defendants should have to be compensated adequately for the prejudice that may be caused to them.

16. Accordingly, the following order is passed:

(i) To add the relief after the prayer, viz., **(a)(i)** is **dismissed**.

(ii) This application is **partly allowed**, with respect to the amendment sought for in the prayer portion, viz., **(a)(ii)** and the consequential amendment with respect to payment of court fees, on payment of cost of Rs.5,000/- [Rupees five thousand only], payable to the defendants 1 to 3, within a period of two weeks from the date of receipt of a copy of the order, failing which, this application shall stand automatically dismissed.

(iii) The requisite Court fee, shall be paid by the plaintiff.

(iv) Two weeks' time is granted to the plaintiff to amend the plaint.

(v) Liberty is granted to defendants 1 to 3, to file an additional written statement, based on the said amendment within two weeks from the date of service of amended copy of the plaint.

17. With the above direction, this application is disposed of.

08.11.2016

vj2

PUSHPA SATHYANARAYANA,J.,

vj2

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