

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.347 of 2014

and

M.P.No.1 of 2014

K.Rajendran

.. Petitioner

Vs

C.Krishnana

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.09.2013 made in I.A.No.1417 of 2013 in O.S.No.421 of 2011 on the file of the Principal District Munsif Court, Alandur.

For Petitioner : Mr.T.Easwaradhas

For Respondent : Mr.S.Gunasekaran

ORDER

The Civil Revision Petition is filed against the order dated 14.09.2013 made in I.A.No.1417 of 2013 in O.S.No.421 of 2011 on the file of the Principal District Munsif Court, Alandur.

2.The respondent as a plaintiff filed a suit for injunction restraining the defendant from disturbing the peaceful possession and enjoyment of the suit property. The defendant disputed the title to the property and contested the suit. When the matter was posted for cross examination of P.W.1, the plaintiff filed an application in I.A.No.1417 of 2013 for amendment. After hearing both sides, the said application was allowed. Against which, the present Civil Revision Petition has been filed.

3.Learned counsel for the petitioner raised the following points:

- 1) Since the case has been in part heard stage Proviso of Order XVI Rule 17 of CPC has not been complied with. That factum was not considered by the Trial Court.
- 2) In the affidavit filed in I.A.No.1417 of 2013, amendment sought for has not been given.
- 3) Even in paragraph No.4 of the affidavit, he has stated that the extent of the property also changed but he has not filed any amendment for description of the property. That factum was not considered by the Trial Court.
- 4) No purpose will be served if the amendment is granted since the plaintiff himself disputed the title to the property he ought to have filed a suit for declaration and injunction. So, the suit itself is not

maintainable. Hence, he prayed for setting aside the order passed by the Trial Court.

- 5) To substantiate his argument, he relied upon the decision reported in ***2011 (5) MLJ 444 (A.K.Balasundaram (died) and others vs. Kruba)***, wherein it was held that the Court may at any stage of the proceeding, on request by either party, amend the pleading, but no application could be entertained after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of trial.

5. Resisting the same, the learned counsel for the respondent would submit that some over writing has been made in paragraph No.3 of the plaint. He would also submitted that he has also filed an application for interim injunction, wherein ad-interim injunction has been granted. But the previous counsel has colluded with the other party has not complied with the Provision of Order XXXIX Rule 3A of CPC and hence, ad-interim injunction has been vacated. Against which, he preferred a revision wherein a direction has been given to dispose of the suit within three months. When the respondent filed a proof affidavit it was posted for cross examination and at that time only he came to know about over writing. Immediately he filed an application for amendment, after change of counsel. He further submitted that non-

furnishing of the amendment sought for is not fatal. Hence, he prayed for dismissal of the revision petition.

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.The respondent as a plaintiff filed a suit for bare injunction stating that he got the property by way of a settlement deed dated 11.03.2011 executed by one C.Gokula Krishnan in respect of item No.1 and in respect of item No.2 the plaintiff got the property by way of an another settlement deed dated 11.03.2011 executed by C.Sunil Kumar. The plaintiff derive title to the property in paragraph No.3 of the plaint. It is stated that one Meena wife of Gnana Sundaram had purchased the same under three sale deeds. It is also an admitted fact that when P.W.1 is in the witness box proof affidavit of P.W.1 was filed. When the matter was posted for cross examination of P.W.1, an application has been filed. At this juncture, it is appropriate to incorporate Order VI Rule 17 of CPC, which is as follows:

17.Amendment of Pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in

controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8.As per Order VI Rule 17 of CPC, amendment of the plaint before the commencement of trial is automatic and once the trial has been commenced, the plaintiff ought to have satisfied the Proviso that in spite of due diligence, he was not able to collect material for amendment before commencement of trial and then only, he is entitled to do so. But the plaintiff herein has stated that the previous counsel has not conducted the case properly and when the exparte decree has been passed at that time some correction has been done in the original plaint. But in paragraph No.4, it was specifically mentioned that after filing change of vakalat while verifying the back papers, it came to his knowledge that document number of which he relied upon has been altered in paragraph No.3 of the plaint. So, he was forced to file this application. Furthermore, the title deed documents were not filed and without such documents, how they came to know that the properties were purchased by one Meena. Even now, they have not filed the documents before the Trial Court and now only they have filed the xerox copies of the documents. In such

circumstances, I am of the view that carrying out amendment in respect of date and document number will no way change the nature of the suit.

9. Furthermore, the learned counsel for the petitioner submitted that in paragraph No.4 of the affidavit, it has been stated that the extent of the property has also changed in the description of the property. But on perusal of the description of the property it was specifically mentioned that in respect of item No.1, vacant land in Survey Nos.385/2, 386/11, bearing Plot No.389 measuring an extent of 1890 sq.ft. and in respect of item No.2 vacant land in Survey Nos.385/2, 386/10B, 386/11, bearing Plot No.388 measuring an extent of 2340 sq.ft. In such circumstances, merely because the plaintiff has not sought for amendment of the description of the property will not change the nature of the suit because he has relied upon the document dated 11.03.2011, claiming title under the settlement deeds dated 11.03.2011 alleged to be executed by one Gokula Krishnan and Sunil Kumar, the date of the parent documents and extent has not been wrongly mentioned. So, the argument advanced by the learned counsel for the petitioner that no purpose will be served if the amendment is granted does not merit acceptance because as already stated in paragraph No.4 of the affidavit it was specifically mentioned that after engaging the new counsel, he came to know about the mistake committed by the previous counsel and immediately, he filed this application

under Order VI Rule 17 of CPC, wherein it was mentioned that after commencement of the trial, if the party has satisfied the Court that in spite of due diligence the party could not have raised the matter before commencement of trial, he is entitled for filing application for amendment. In the present case, the reason mentioned by the plaintiff is sufficient to allow the plaintiff to file an application. So, I am of the view that there is no necessity to amend the description of the property and only the document number, date and extent in the document has to be amended.

10. The learned counsel for the petitioner would also submitted that the respondent herein has not mentioned the amendment sought for in the petition. It is the duty of the plaintiff/defendant who filed an application for amendment must mention the amendment sought for in the petition. But admittedly, it was mentioned. The suit is of the year 2011. Once the matter was remitted and given an opportunity it will take time for disposing the case. Furthermore, the petitioner raised the plea that the suit itself is not maintainable without the prayer for declaration of title since the title to the plaintiff is disputed by the defendant. Even though the plaintiff has not mentioned the amendment sought for in the affidavit, to do substantial justice in earlier point of time, the Trial Court has allowed the application. In such circumstances, I am of the view that even though this Court has given direction

to dispose of the case in short spell of time, this application has been filed after commencement of trial. The Trial Court has also awarded the cost of Rs.1,000/- and the same has been deposited in the Court. Hence, I do not find any reason to interfere with the finding of the Trial Court and the same is hereby confirmed. Consequently, the Civil Revision Petition deserves to be dismissed as devoid of merits.

11.In the result, the Civil Revision Petition is dismissed. Since the suit is in a part heard stage and after amendment, the petitioner/defendant is entitled to file an additional written statement, the Trial Court is directed to dispose of the suit in O.S.No.421 of 2011 within three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

28.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The Principal District Munsif, Alandur.

R.MALA. J.,

cse

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