

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.1818 OF 2016
AND CMP NO.9513 OF 2016

Rajasankar

... Petitioner

Versus

1.Rajamohan

2.M/s.Vijaya Bank

Rep. By its Branch Manager
Having office at No.114-A, First Floor,
Jawaharlal Nehru Street,
Puducherry.

3.S.Gunasekaran

4.S.Gowri

5.S.Baskaran

6.S.Varadarasu

7.M/s.Reliance Industries Ltd.,

Rep. By its Power Agent S.Gabriel
Having office at 3rd Floor,
Maker Chamber IV,
222, Nariman Point,
Mumbai – 400 021.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 19.04.2016 passed by the learned Principal District Judge, Puducherry, in I.A.No.758/2016 in

O.S.No.6/2005 dismissing the petition filed by the petitioner praying to amend the plaint in O.S.No.6/2005 filed under Order 6 Rule 17 CPC.

For Petitioner : Mr.Manoj Sreevalsan

For Respondent-1 : Mr.J.Selvarajan

For Respondent-7 : Mr.P.J.Rishikesh

For Respondents

2 to 6 : No appearance

ORDER

The petitioner filed a suit for partition and separate allotment of his half ($\frac{1}{2}$) share in O.S.No.6 of 2005 on the file of the learned Principal District Judge, Puducherry. In the said suit, the petitioner took up a contention that he took a loan of Rs.18,97,000/- and constructed the superstructure. It was his further contention that the rent advance paid by the tenants were also utilised for construction. According to the petitioner, he took loan along with the first respondent and completed the construction.

2. The first respondent in his written statement though admitted that the funds provided by the lessees were used for the constructing the house, he specifically denied the contention regarding

the loan availed as well as the amount of Rs.18,97,000/- stated to have been spent by the petitioner for the construction of building. The Trial Court recorded the evidence of parties.

3. Thereafter, the petitioner filed an application in I.A.No.758 of 2016 to amend the plaint seeking the relief of declaration that the superstructure absolutely belongs to him. The application was opposed by the respondents. The learned Trial Judge was of the view that in case the amendment is allowed, it would change the very case filed by the petitioner. The learned Trial Judge therefore dismissed the application. The said order is under challenge in this Civil Revision Petition.

4. The learned counsel for the petitioner contended that the petitioner spent considerable amount for putting up the superstructure. The petitioner along with the first respondent took a loan of Rs.18,97,000/- from M/s.Vijaya Bank, Puducherry and constructed the building. According to the learned counsel, the first respondent denied the amount spent by taking loan for the construction. Such being the factual position, the petitioner was correct in seeking a decree of declaration.

5. The learned counsel for the first respondent justified the order passed by the Trial Court. According to the learned counsel, it is for the petitioner to plead and prove before the Trial Court that he has spent the amount and the loan was taken with the consent of the first respondent.

6. The suit in question was originally instituted in 1999 before the Sub Court, Pondicherry. Subsequently, it was transferred to the Principal District Court, Pondicherry and renumbered as O.S.No.6 of 2005. It is a matter of record that the first respondent filed the written statement wayback on 25.01.2000. It is not in dispute that the amendment application was filed only after the conclusion of trial.

7. The petitioner in his application in I.A.No.758 of 2016 contended that the superstructure was put up by him by taking a loan from M/s.Vijaya Bank, with the consent of the first respondent. It was his further contention that he raised the funds with considerable difficulties and as such, the first respondent was not correct in his contention. In view of the contention taken by the first respondent, the petitioner wanted a decree of declaration that the superstructure absolutely belongs to him.

8. There is no question of taking up a plea of declaration in a suit for partition, after completion of trial. It is a matter of record that it was 15 years after filing written statement by the first respondent, the petitioner filed the application for amendment of the plaint. The affidavit filed in support of the interlocutory application does not contain any indication that the petitioner has taken due diligence. The petitioner took up a contention that he spent considerable amount for the purpose of putting up the construction. It is always open to the petitioner to plead and prove that the amount was actually spent by him, and as such, he is entitled to preferential allotment of dwelling amount.

9. Admittedly, the parties are having equal shares. The superstructure put up on the property belongs to both the petitioner and the first respondent. There is no question of seeking a decree of declaration that the building alone belongs to the petitioner, after the completion of trial and more particularly, in a suit for partition, where the share of the first respondent was clearly admitted by the petitioner in his plaint filed originally. Merely because the first respondent denied the claim made by the petitioner that no such amount was spent by him, it cannot be said that the petitioner is entitled to a decree of declaration that the superstructure absolutely belongs to him. I am therefore of the

view that the learned Trial Judge was perfectly correct in dismissing the application in I.A.No.758 of 2016.

10. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected civil miscellaneous petition is closed.

11. However, I make it clear that the dismissal of this Civil Revision Petition would not stand in the way of the petitioner producing materials to demonstrate that the amount was in fact spent by him and the loan was taken with the consent / permission of the first respondent.

10.11.2016

TK

To

The Principal District Judge
Puducherry.

K.K.SASIDHARAN, J.

TK

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