

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2015

DATED: 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD) No.1792 of 2013

and

M.P.No.1 of 2013

R.Senthilkumar

... Petitioner/Defendant

Vs.

C.Natarajan

...Respondent/Plaintiff

Prayer: Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.02.2013 made in I.A.No.604 of 2012 in O.S.No.82 of 2009 on the file of the learned Additional District Munsif, Tiruchengode.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.R.Balasubramaniam

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ORDER

This Civil Revision Petition is filed by the petitioner/defendant, against the order dated 19.02.2013 passed by the learned Additional

District Munsif, Tiruchengode, in I.A.No.604 of 2012 in O.S.No.82 of 2009, in and by which, the said I.A. filed under Order 6 Rule 17 of CPC, for amendment of the plaint, was allowed with costs.

2. Learned counsel for the petitioner/defendant contended that the trial Court, without application of mind, passed an erroneous order allowing the application filed for amendment of the plaint. The learned counsel further submitted that the trial Court has failed to consider the fact that the suit was filed for mandatory injunction and the petitioner/defendant has filed his written statement on 10.08.2009 by disputing the title of the respondent/plaintiff and also the maintainability of the suit. The learned counsel also submitted that the said amendment application has been filed only after the examination of P.W.1 and P.W.2 and further, without assigning any reason, the amendment application has been filed. It is also submitted that the trial Court has failed to note that the amendment is totally time barred, because the respondent/plaintiff is not having limitation for filing a fresh suit in respect of the relief sought to be included by way of amendment and therefore, time barred amendment is devoid of merits. Hence, the learned counsel

submitted that the order of the trial Court may be set aside and the Civil Revision Petition may be allowed.

3. In support of his contention, the learned counsel for the petitioner/defendant has relied on a decision of the Hon'ble Apex Court reported in **2015 (6) CTC 562 [L.C.Hanumanthappa Vs. H.B.Shivakumar]**, wherein, at Paragraph Nos.14 and 29, the Hon'ble Apex Court has held as follows:-

"14. Given this statement of the law, it is clear that the present amendment of the plaint is indeed time-barred in that the right to sue for declaration of title first arose on 16th May 1990 when in the very first Written Statement the Defendant had pleaded, in para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. The only question that remains to be answered is in relation to the Doctrine of Relation Back insofar as it applies to amendments made under Order 6, Rule 17 of the Code of Civil Procedure.

15 to 28.

29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original Written Statement itself dated 16th May 1990, the Defendant had clearly put the Plaintiff on Notice that it had denied the Plaintiff's title to the Suit property. A reading of an isolated Para in the Written Statement, namely, para 2 by the Trial Court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under Appeal. The original Written Statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's

*title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28th March 2002 had expressly remanded the matter to the Trial Court, allowing the Defendant to raise the plea of limitation. There can be no doubt that on an Application of **Khatri Hotels Private Limited** (supra), the right to sue for declaration of title first arose on the facts of the present case on 16th May 1990 when the original Written Statement clearly denied the Plaintiff's title. By 16th May 1993, therefore, a Suit based on declaration of title would have become time-barred. It is clear that the Doctrine of Relation Back would not apply to the facts of this case for the reason that the Court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the preset case to warrant the Doctrine of Relation Back applying so that a legal right that had accrued in favour of the Defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present Appeal is accordingly dismissed."*

4. The learned counsel for the petitioner/defendant has also relied on a decision of the Hon'ble Apex Court reported in **(2013) 9 Supreme Court Cases 485 [Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and others]**, wherein, at paragraph No.8, the Hon'ble Apex Court has held as follows:-

"8. Indisputably, Respondent 1-plaintiff was the office-bearer of the Society at the relevant time and by resolution taken by the Society Respondent 1 was authorised to complete the transaction. Hence, it is incorrect to allege that Respondent 1-plaintiff was not aware about the transaction of 1989. Moreover, before the institution of the suit in the year

2010, the plaintiffs allegedly came to know about the conveyance deed dated 8-2-1989, sometime in the year 2009, but relief was not sought for in the plaint which was filed much later i.e. 14-10-2010. The High Court has not considered these undisputed facts and passed the impugned order on the general principles of amendment as contained in Order 6 Rule 17 of the Code of Civil Procedure. Hence we do not find any ground for allowing the amendment sought for by the plaintiffs which was not only a belated one but was clearly an afterthought for the obvious purpose to avert the inevitable consequence. The High Court has committed serious error of law in setting aside the order passed by the trial court whereby the amendment sought for was dismissed. The impugned order of the High Court cannot be sustained in law."

5. Learned counsel for the respondent/plaintiff contended that the suit was filed for mandatory injunction. Subsequently, the Commissioner has also filed his inspection report with plan and thereafter, the suit was filed for recovery of possession and amendment is sought for. The learned counsel further submitted that the trial Court, after appreciating the facts and circumstances of the case, allowed the application filed for amendment and therefore, there is no infirmity or illegality in the order passed by the trial Court and hence, he prayed that the Civil Revision Petition may be dismissed.

6. This Court heard the submissions made by the learned counsel for the petitioner/defendant and the learned counsel for the respondent/plaintiff and also perused the materials available on record.

7. It is admitted by both sides that originally, the respondent/plaintiff has filed a suit in O.S.No.82 of 2009 for permanent injunction restraining the defendant, his henchmen, agents from encroaching the suit property by constructing superstructure in the suit property and from in any way interfering or disturbing the plaintiff's peaceful possession and enjoyment of the suit property. In this case, admittedly, an Advocate Commissioner was appointed to inspect the suit property and the Advocate Commissioner, after giving notice to both parties, visited the suit property and submitted a report with plan.

8. The learned counsel for the respondent/plaintiff has filed his objections to the Advocate Commissioner's report. After the filing of the Commissioner's report, P.W.1 and P.W.2 were examined on the

side of the respondent/plaintiff. Thereafter, the respondent/plaintiff has filed an application for amendment of the plaint. The respondent/plaintiff, in his affidavit, has specifically stated that petitioner/defendant has encroached some portion of the plaintiff's suit property and he prays for mandatory injunction and for permanent injunction. The respondent/plaintiff came to know about the objection made by the petitioner/defendant that no declaration was prayed for by the plaintiff and thereafter, he wanted to amend the plaint and the amendment application is filed by the respondent/plaintiff for declaration for the encroached portion. The allegation of the respondent/plaintiff is that the petitioner/defendant has encroached some portion of the suit property belonging to him. The questions as to whether the petitioner/defendant encroached some portion of the suit property or not and whether the declaratory relief is time barred or not, have to be decided only after adducing of evidence by both sides. The trial Court, after gone through the material facts of the case, came to a correct conclusion and allowed the application filed for amendment with cost of Rs.1,500/- to be paid to the petitioner/defendant. The citations relied on by the respondent/plaintiff is not applicable to the facts of the present case.

Hence, this Court is of the considered view that there is no infirmity or illegality in the impugned order passed by the trial Court in allowing the application filed for amendment of the plaint and the civil revision petition is liable to be dismissed.

9. In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. No costs.

05.01.2016

Index :Yes / No
Internet :Yes / No
Jrl

To

The Additional District Munsif,
Tiruchengode.

G.CHOCKALINGAM, J.

Jrl

Order in

C.R.P.(PD).No.1792 of 2013

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