

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-12-2016

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).Nos.3331 and 3332 of 2016
and
C.M.P.No.17063 of 2016

S.Krishnan

.. Petitioner in both C.R.Ps.

Vs.

1. G.Krishnan

2. Akkaamma @ Muthamma

.. Respondents in both C.R.Ps.

Civil Revision Petition No.3331 of 2016 filed under Article 227 of the Constitution of India against the fair and final order dated 26.03.2014 in I.A.No.641 of 2012 in O.S.No.246 of 2005 on the file of the District Munsif-cum-Judicial Magistrate Court No.1, Hosur.

Civil Revision Petition No.3332 of 2016 filed under Article 227 of the Constitution of India against the fair and final order dated 26.03.2014 in I.A.No.76 of 2013 in O.S.No.246 of 2005 on the file of the District Munsif-cum-Judicial Magistrate Court No.1, Hosur.

For petitioner : Mr.C.Prabakaran

For respondents : Mr.R.Jayaprakash

ORDER

The plaintiff is the petitioner in both these revision petitions. C.R.P.(PD).No.3331 of 2016 is filed challenging the dismissal of I.A.No.641 of 2012 in O.S.No.246 of 2005 filed by the plaintiff for amendment of the plaint.

C.R.P.(PD).No.3332 of 2016 is filed challenging the allowing of I.A.No.76 of 2013 in O.S.No.246 of 2005 filed by the defendants for re-issue of warrant of the Commission.

2. The suit was initially filed for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff. Written statement was filed by the defendants, wherein the title of the plaintiff is disputed. In the meanwhile, the plaintiff has also sought for appointment of Commissioner to measure and note down the physical features of the property with the help of a Surveyor. In the amendment application, the plaintiff has sought to add the relief of declaration of his title that he is the absolute owner of the suit property and also for grant of mandatory injunction in favour of the plaintiff , against the defendants to remove the unauthorised construction put up by the defendants on the Western side of the suit property and more specifically mentioned in the sketch given by the Commissioner.

3. The application for amendment was resisted by the defendants firstly on the ground of delay and secondly that the suit was filed in the year 2005 and the written statement was filed in the year 2006 and the present application for amendment was filed by the plaintiff only after the report of the Advocate Commissioner was filed.

4. The learned District Munsif dismissed the application filed by the plaintiff for amendment on the ground of limitation and allowed the application filed by the defendants for re-issue of Commission, on the ground of the same would help to

decide the issues in the suit.

5. No doubt, the relief of mandatory injunction would be barred by limitation, as the amendment now sought for is only in the year 2012, when the suit was originally filed in the year 2005.

6. However, so far as the relief of declaration is concerned, when there is denial of title by the defendants, the plaintiff should be given an opportunity to ask for the prayer of declaration of title, else, the subsequent suit would be barred under Order 2 Rule 2 CPC. Therefore, I am of the opinion that the application filed by the plaintiff for amendment in I.A.No.641 of 2012 has to be allowed with respect to the relief of prayer (a) therein, i.e. for declaration of title that the plaintiff is the absolute owner of the suit property and consequently, necessary Court fees had to be paid by the plaintiff. Accordingly, the Revision Petition challenging the dismissal of I.A. filed for amendment of the plaint, has to be partly allowed.

7. So far as the other Revision Petition filed against the allowing of re-issue of warrant is concerned, it is stated by the learned counsel for the respondents/defendants that though they have filed objections to the report of the Commissioner at the earliest point of time, the same were rejected, as it was filed beyond time. As, earlier, the plaintiff has filed the suit only for the relief of injunction, the Commissioner had not noted down the portion encroached upon by the defendants. Now, when the plaint is amended for the relief of declaration also, it would be right to allow the same Commissioner to file the second report based on the documents that may be filed by both parties. The learned District Munsif

has also allowed the same and there is no infirmity in the impugned order passed by the Court below on that aspect. Hence, the revision petition filed against the order allowing re-issue of Commission, is liable to be dismissed.

8. Accordingly, C.R.P.(PD).No.3331 of 2016 is partly allowed and C.R.P.(PD).No.3332 of 2016 is dismissed. The revision petitioner/plaintiff is directed to carry out necessary amendment in the plaint, within two weeks from the date of receipt of a copy of this order. The respondents/defendants are at liberty to file additional written statement after the amendment is carried out by the plaintiff. The Advocate Commissioner shall inspect the suit property and file the second report/sketch, within three weeks from the date of issuance of the warrant by the trial Court, which shall be issued by the trial Court within a period of one week from the date of receipt of a copy of this order. Since the suit is of the year 2005, the learned District Munsif, Hosur is directed to dispose of the suit by 30.04.2017. No costs. Consequently, C.M.P. is closed.

09-12-2016

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Copy to

The District Munsif-cum-Judicial Magistrate No.1, Hosur.

PUSHPA SATHYANARAYANA, J

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