

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.439 of 2016

&

C.M.P.No.2266 of 2016

1.A.Krishnan
2.A.Kanniappan
3.A.Gopal

... Petitioners

VS.

1.M.Meenambal

2.M/s.Sai Care India Private Ltd.,
Rep. By its Manager
Mr.Vinoth S/o.Veerasamy
Agasthiya Street, Gandhi Nagar
No.7, Ashwar Apartments, Saligramam
Chennai

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.10.2015 made in I.A.No.838 of 2013 in O.S.No.222 of 2007 on the file of the learned District Munsif Court, Chengalpattu.

For Petitioner : Mr.V.Subramanian

ORDER

The arguments advanced by Mr.V.Subramanian, learned counsel for the petitioners are heard.

2. The petitioners herein filed a suit O.S.No.222 of 2007 on the file of the District Munsif, Chengalpattu for a declaration that the sale deed dated 23.10.2006 registered as Document No.9261 of 2006 on the file of Sub-Registrar, Thiruporur is null and void and for a consequential permanent injunction restraining the respondents herein from interfering with the plaintiff's alleged peaceful possession and enjoyment of the suit property. The suit was filed in the month of July 2007. After a period of 6 years, when the trial of the suit was in progress, they filed an application in I.A.No.838 of 2013 for amendment of the plaint to include a prayer for declaration of their alleged title to the suit property.

3. The said application was resisted by the respondents herein contending that the petitioners/plaintiffs could not be permitted to take away the right accrued to the defendants by raising a plea destructive of such an accrued right. It was also contended therein

that the proposed amendment sought to give a go by to the plea raised in the plaint and it is reiteration in the proof affidavit of PW1. The petition was also resisted on the ground of belatedness.

4. The learned trial Judge, after hearing both sides, came to the conclusion that the petition for amendment filed at a belated stage, when the trial was in progress, could not be allowed. The learned trial Judge also opined that the proposed amendment would change the nature of the suit with a new cause of action and new pleading. Accordingly, the learned trial Judge dismissed the said application by order dated 07.10.2015. As against the said order of the learned trial Judge dated 07.10.2015, the present revision has been filed under Article 227 of the Constitution of India.

5. Though Order VI Rule 17 CPC gives power to the Court to permit either party to the suit to amend or alter his pleadings in such a manner and on such terms, as may be just and all such amendments that may be necessary for the purpose of determining the real question in controversy between the parties, the proviso provides an embargo for entertaining such an amendment application after the trial has commenced, unless the Court comes to the conclusion that in spite

of due diligence, the party seeking amendment could not have raised the matter before the commencement of the trial. The said provision has been interpreted by the Apex Court in ***State of Madhya Pradesh Vs. Union of India*** reported in **(2011) 12 SCC 268** to the effect that the amendment cannot be claimed as a matter of right under all circumstances. The Apex Court held that the Court should avoid a hypertechnial approach and liberal approach should be made in cases where the other side is compensated with costs and the amendment would avoid multiplicity of proceedings.

6. Upon considering the facts and circumstances of the case on hand, this Court is of the view that the petitioners' case does not come under the exempted category of cases referred to by the Supreme Court in ***State of Madhya Pradesh Vs. Union of India***, cited supra. The execution of the sale deed by the first defendant in favour of the second defendant is of the causes of action for the plaintiffs to seek a declaration that the sale deed is null and void. It is based on the assertion of title by the first defendant in her and denial of title, if any, of the plaintiffs in respect of the suit property, the sale deed came to be executed and the same provided the cause of action for filing the suit. Order II Rule 2 (1) CPC says that every suit shall include the

whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Sub-clause (2) of Rule 2 is the effect that if the plaintiff omits to sue in respect of any portion of his claim he shall not afterwards sue in respect of such portion of the claim so omitted. Order II Rule 2 (3) CPC is to the effect that if a person is entitled to more than one relief in respect of the same cause of action, he may sue for all or any of such reliefs, but in case he omits to sue for some of the reliefs without the leave of the Court, then he shall not afterwards sue for any such relief so omitted.

7. In the case on hand, the cause of action for seeking declaration of title arose before the date of filing of the suit and the cause of action for seeking a declaration that the sale deed is null and void and the cause of action for seeking a declaration of title are one and the same. Despite the same, the petitioners/plaintiffs omitted to sue for the other relief, namely declaration of title, may be with a view to avoid payment of court fee on *ad valorem* value. Such deliberate act of omission to sue for one of the reliefs available to the petitioners is now sought to be claimed by way of amendment, solely with a view to get over the bar provided under Order II Rule 2, Sub-clause (2) and (3) CPC. The petition could have been dismissed on that score alone.

However, the learned trial Judge, taking note of the belatedness in filing the petition for amendment and also the fact that the petitioners were aware of their right to seek such a relief at the time of filing of original plaint itself, chose to dismiss the petition seeking amendment.

8. This Court does not find any defect or error in the order passed by the trial Court. While confirming the reasons assigned by the trial Court, this Court will add the above said reason also as a ground for rejecting the prayer for amendment made by the petitioners herein / plaintiffs. There is no merit in the revision petition, which does not even merit admission and on the other hand, it deserves to be dismissed at the threshold.

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

17.02.2016

Index: Yes/No
Internet: yes/No
gpa

To

The District Munsif Court

Chengalpattu

P.R.SHIVAKUMAR.J.,

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