

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31-03-2016

PRONOUNCED ON : 11-05-2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P.(PD) 909 of 2016

and

C.M.P.No.5038 of 2016

Chockalingam Palaniappan
Rep. by its Power of Attorney Agent
S.Palaniappan

... Petitioner

vs.

1.Tamil Nadu Industrial Investment Corporation Ltd
Rep. by its Chairman
692, Anna Salai
Nandanam, Chennai - 600035

2.Ganga
3.J.Santha Kumari
4.Jeyanthi
5.Usha
6.Anusha
7.T.K.R.Prabhu
8.S.N.Vadivelu
9.V.Visalakshi
10.V.Subramani

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 22.01.2016 passed in I.A.No.232 of 2012 in O.S.No.347 of 2009 on the file of Principal District Judge, Kancheepuram District at Chengalpattu and consequently allow I.A.No.232 of 2012 in O.S.No.347 of 2009.

For Petitioner : Mr.PL.Narayanan

For Respondents : Mr.K.Azhaguraman

ORDER

This civil revision petition has been filed by the plaintiff in O.S.No.347/2009 pending on the file of the Principal District Judge of Kancheepuram District at Chengalpattu, questioning the legality of the order of the trial court dated 22.01.2016 made in I.A.No.232/2012 in the above said original suit.

2. The arguments advanced by Mr.PL.Narayanan, learned counsel for the revision petitioner and by Mr.K.Azhaguraman, learned counsel for the respondents 8 to 10 were heard. The certified copy of the impugned order, grounds of revision, the counter affidavit of the contesting respondents, the other documents produced in the form of typed set of papers and were also perused.

3. Chockalingam Palaniappan represented by his Power Agent S.Palaniappan (the revision petitioner herein) has filed O.S.No.347/2009 on the file of the Court of the Principal District Judge, Chengalpattu against Tamil Nadu Industrial Investment Corporation Limited and nine others for:

a) a declaration that the plaintiff is the sole, exclusive and absolute owner of the suit property, viz. land measuring 34 cents comprised in Survey Nos.219/2, Ward No.D, Block No.41 formerly in Irumbuliyur Village now part of Tambaram within Tambaram Taluk and Sub Registration District of Tambaram morefully described in the plaint schedule and recovery of vacant possession of the suit property.

b) a mandatory injunction permitting the plaintiff to remove, at the defendants costs, the existing compound wall and any other structure that the defendants 8 to 10 shall venture to put up on the suit property;

c) a direction to the defendants 7 to 10 to pay to the plaintiff a sum of Rs.1,00,000/- as damages for illegal use and occupation of the suit property for the period between 15th September and 15th October 2009 and continue to pay damages at the rate of Rs.1,00,000/- per month until delivery of vacant possession of the suit property to the plaintiff; and

d) a direction to pay the costs of the suit.

4. Contending that the averments made in the plaint in O.S.No.347/2009 were aimed at tarnishing the image of S.N.Vadivelu, the 8th defendant in the said suit and they amounted to slander and libel lowering his reputation in the minds of public, he chose to file C.S.No.601/2011 on the original side of the High Court for recovery of a sum of rupees three crores as compensation with costs from the plaintiffs in O.S.No.347 of 2009 on the file of the District Court, Chengalpattu

5. Thereafter the revision petitioner chose to file Tr.C.M.P.No.221/2014 praying for the withdrawal of his suit O.S.No.347/2019 from the file of the Court of the Principal District Judge, Chengalpattu and transferring the same to any one of the Courts at Chennai or in the suburban area of Chennai.

6. During the pendency of the suit O.S.No.347/2009 on the file of the Court of the Principal District Judge, Chennai, the plaintiff therein, who is the revision petitioner herein, filed I.A.No.232/2012 under Order VI Rule 17 CPC seeking permission to amend the plaint. The said application, after enquiry came to be dismissed by the trial court by an order dated 22.01.2016. The said order of dismissal of I.A.No.232/2012 in O.S.No.347/2009 on the file

of the Principal District Judge, Chengalpattu is impugned in the present civil revision petition filed invoking the power of superintendence of the High Court under Article 227 of the Constitution of India.

7. Mr.PL.Narayanan, learned counsel for the revision petitioner argued that the revision petitioner/plaintiff in O.S.No.347/2009 filed the said suit for larger reliefs and due to the change of circumstances that took place after the filing of the suit, he wanted to give up certain prayers and hence he filed the application I.A.No.232/2012 seeking amendment of the plaint; that the court below ought to have permitted him to restrict his claim by allowing him to amend the plaint and that the court below committed an illegality in exercise of its jurisdiction in not allowing such an amendment restraining or abridging the claim.

8. Per contra, it is contended on behalf of the contesting respondents that after the 8th respondent (S.N.Vadivelu) filed C.S.No.601/2011 on the original side of the Madras High Court claiming a sum of Rs.3,00,00,000/- as compensation for defamation, the revision petitioner/plaintiff in O.S.No.347/2009 on the file of the Principal District Judge, Chengalpattu took successive steps to stall the proceedings by filing a petition before the High Court in Transfer C.M.P.No.221/2014 for transferring the said case and then by filing the petition for amendment concerned in this revision, with an intention of dragging on the case. It is the further contention of the learned counsel for the contesting respondents that the said application came to be filed as a counter measure for an application filed by the 8th respondent S.N.Vadivelu under Order VII Rule 11 CPC for the rejection of the plaint in O.S.No.347/2009 on the ground that the cause of action stated

therein was vexatious and no real and clear cause of action has been spelt out in the plaint. The learned counsel for the contesting respondents also contend that instead of proceeding with enquiry in the said application for rejection of plaint, the revision petitioner has indulged in filing the application I.A.No.232/2012 for amendment of the plaint, which can also be viewed as an attempt to escape the consequence of under valuation of the relief and payment of lesser court fee.

9. It is the further contention of the learned counsel for the contesting respondents that if at all the revision petitioner/plaintiff in O.S.No.347/2009 wants to give up a portion of his claim or abridge the scope of the relief claimed in the plaint, he can do so either by filing a Memo or by making an endorsement or by conceding in his evidence during trial and that when such ways of giving up a portion of the claim are available to the revision petitioner, the revision petitioner has indulged in prolonging the case by filing one or the other petition and I.A.No.232/2012 filed for amendment of the plaint is one such petition.

10. The learned counsel for the revision petitioner does not dispute that the revision petitioner filed Transfer civil miscellaneous petition No.221/2014 seeking transfer of the suit O.S.No.347/2009 from the file of Principal District Judge, Chengalpattu to City Civil Court at Chennai or any one of the courts in the suburban area of Chennai city. It is also an admitted fact that the transfer civil miscellaneous petition was not with a view to have joint trial of the suit filed by the revision petitioner with the suit filed by the 8th respondent, namely C.S.No.601/2011 on the original side of this court. It is also not in dispute that the 8th respondent S.N.Vadivelu has filed a petition

under Order VII Rule 11 CPC as I.A.No.635/2011 for rejection of the plaint. It is also not in dispute that the said application for rejection of plaint is still pending. After the 8th respondent S.N.Vadivelu filed I.A.No.635/2011 praying for the rejection of the plaint under Order VII Rule 11 CPC, the revision petitioner filed counter in the said application on 21.03.2012 and the enquiry in the said application was prolonged till the hearing of this civil revision petition. Meanwhile, the revision petitioner filed Transfer civil miscellaneous petition No.221/2014.

11. A perusal of I.A.No.232/2012 seeking permission to amend the plaint will make it clear that extensive amendments were sought to be made. Besides deleting certain paragraphs, namely paragraph 9 at page No.8 and paragraph 13 at page 9 of the plaint, the resultant re-numbering of paragraphs 10 as paragraph 9, paragraph 11 as paragraph 10, and paragraph 12 as paragraph 11, has also been sought for. In addition, the revision petitioner also sought for inclusion of a new paragraph No.12 to the following effect:

"12. The plaintiff respectfully states that the 1st defendant following the defaults committed by the borrower foreclosed the loan account on 27.07.1995 and took physical possession of the suit property in 1996 exercising its powers under Section 29 of the State Financial Corporation. Thereafter when the plaintiff purchased the suit property on 13.07.2006 was immediately put in physical possession of the property by the 1st respondent after laying four stones with the stone tops painted in yellow colour in the four corners of the suit property. Thereafter on 01.09.2009, the defendants 8 to 10 trespassed into the suit property and subsequently abandoned the same fearing punishment for the offence of trespass since 17-08-2011. The plaintiff is in physical possession of the suit property once again

from 17-08-2011. He has posted security guard Rajeev Gandhi and his family members after erecting a small house with toilet in the suit property. Electricity connection has been obtained by the plaintiff and electricity charges are regularly paid by me and I am thus in physical possession of the suit property."

12. He has also prayed for re-numbering of the original paragraph 14 into paragraph 13 with the following additions:

"When the police conducted an enquiry for land grabbing and trespassing, when the defendants abandoned the suit property on 17-08-2011, when the Plaintiff retook physical possession of the suit property on 17-08-2011, when the plaintiff and his Manager Mohan were taking turns and guarding the suit property, when the 8th defendant henchmen by name Velu and Baswanth again attempted to trespass into the suit property and when the police arrested them and when the 8th defendant directed the said henchmen fearing punishment for criminal trespass directed his agents and servants not to interfere with the plaintiff's possession of the suit property, when the plaintiff subsequently posted security guard by name Rajeev Gandhi and his family, when the Plaintiff is paying the electricity charges and is in physical possession of the suit property and subsequently."

The revision petitioner, besides praying for renumbering of paragraph 15 as paragraph 14, prayed for deletion of the contents found in line No.5 in the said paragraph at page No.11 till the end of the said paragraph at Page No.12 and also for the deletion of a major part of paragraph 16(a) and 16(b) and for inclusion of the following prayer:

"for the consequential relief of prohibitory permanent injunction sought for in paragraph 16(a) of this plaint values this suit for the purpose of Court Fees and Suit Valuation at Rs.1,000/-

and pays a court fee of Rs.75.50 (Rupees seventy five and paise fifty only) under section 27(c) of Tamil Nadu Court Fees and Suits Valuation Act, 1955."

He also prayed for the re-numbering of paragraph 16(a) into paragraph 15(a) and deletion of the substantial part of the prayer and substitution of the same with the following prayer:

"consequently granting permanent injunction restraining the defendants 2 to 10, their agents and servants and any person and every person claiming through them directly or indirectly, from interfering with the plaintiff's peaceful possession and enjoyment of the suit property in survey Nos.219/2, Ward No.D, Block No.41 formerly in Irumbuliyur Village now part of Tambaram measuring 34 cents within the Tambaram Taluk and Sub Registration District of Tambaram."

He also prayed for the deletion of the prayer for mandatory injunction in paragraph 16(b) and the prayer for damages in paragraph 16(c).

13. By such extensive amendments, as rightly contended by the learned counsel for the contesting respondents, the revision petitioner/plaintiff made an attempt to make the plaint unwieldy and cause confusion. Apart from the fact that extensive amendments were sought to be made, the amendments resulting in the deletion of certain prayers seem to have been aimed at avoiding the consequence of under valuation and payment of a lesser court fee.

14. In fact, the amendment of prayer 16(a) seeking declaration of title and recovery of possession into one for permanent injunction can be viewed as an attempt at avoiding payment of court fee, based on the market

value of the property. If at all the revision petitioner/plaintiff was able to get possession of the property after the filing of the suit, he could have very well not pressed the relief for recovery of possession, without seeking amendment of the prayer part of the plaint, which will have the effect of reducing the value of the relief and consequently, the court fee payable. In any event, when the revision petitioner/plaintiff claims that what he intends to do is to give up some of the claims and abridging some of his prayers, can do it either by filing a Memo or by making an endorsement to that effect or by conceding the same in evidence. As the revision petitioner/plaintiff has not chosen to do so and on the other hand, has chosen to file the petition for extensive amendments, that too, when the petition for rejection of plaint is pending for about five years, will show the lack of *bona fide* on the part of the revision petitioner/plaintiff. Hence this court comes to the conclusion that the trial court has not committed any error in exercise of jurisdiction by dismissing the application filed by the revision petitioner/plaintiff for amendment. There is no merit in the revision and the same deserves to be dismissed.

In the result, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is also dismissed.

11.05.2016

Index : Yes
Internet : Yes
asr

To
The Principal District Judge, Kancheepuram District at Chengalpattu

P.R.SHIVAKUMAR, J.
asr/-

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and
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