

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) Nos.992 & 993 of 2016

1.Damodharan
2.G.Vasanth
3.G.Jayamani
4.G.Mohan
5.G.Ravi

... Petitioners
in both the revisions

vs.

1.Mrs.Kantha Bhattad
2.Mr.Sandeep Bhattad
3.Mrs.Kalpana

... Respondents
in both the revisions

Civil Revision Petitions filed under Article 227 of the Constitution of India against the order and decretal order dated 06.11.2015 in I.A.No.1385 and 1386 of 2015 in O.S.No.1393 of 2008 on the file of the District Munsif-cum-Judicial Magistrate Court, Sriperumbudur.

For Petitioners : Mr.G.Justin

ORDER

These matters stand listed today for admission. The revisions under Article 227 of the Constitution of India arise out of a common order dated 06.11.2015 made by the learned District Munsif-Cum-Judicial Magistrate, Sriperumpudur in I.A.Nos.1385 and 1386 of 2015 in O.S.No.1393 of 2008 on the file of the said Court for impleading the respondents 1 and 2 as party defendants and to set aside the *ex parte* decree dated 23.02.2010 respectively.

2. The above said suit came to be filed by one C.Govindaraj (died) and 6 others, who were the sons and daughters of Govindaraj, against one D.Sathyadharan (died) and 2) Mrs.Kalpana W/o.Arpuharaj. Though 6 names are found in the first paragraph of the plaint as the plaintiffs, their ranks, namely serial numbers have not been furnished in the plaint. In fact, it is not known whether the plaintiffs 2 to 6 were originally on record as plaintiffs along with the deceased Govindaraj or they got impleaded subsequently as his legal representatives. It is also not known as to what happened to the legal representatives of Sathyadharan, shown as the defendant. Mrs.Kalpana , W/o.Arpuharaj is also shown as a defendant, but the ranks of the above said persons, have not been furnished in the cause

title. It is also not indicated as to whether Kalpana was originally a defendant or she was impleaded as legal representative of deceased Sathyadharan.

3. In the said suit, an ex parte decree came to be passed on 23.02.2010 as the said Kalpana did not contest the case. Subsequently, respondents 1 and 2 herein filed a suit on the file of the Sub-Court, Kancheepuram against the petitioners 1 to 5 in the revisions for a declaration of their title in respect of the suit property and for a consequential permanent injunction restraining them from interfering with their alleged peaceful possession and enjoyment of the suit property. In the said suit, an application I.A.No.172 of 2013 was filed for interim injunction. While advancing arguments in the said application in O.S.No.43 of 2013, the counsel for the revision petitioners 1 to 5 herein produced a certified copy of the decree passed in O.S.No.1393 of 2008 in the very same Court. Only thereafter, the respondents 1 and 2 herein came to know that an ex parte decree was obtained behind their back by the deceased Govindaraj, who was the first plaintiff in the suit, in respect of the suit properties, against Sathyadharan (deceased) and Kalpana without impleading the purchasers from Govindaraj under a sale deed dated

05.11.1980, 18 years prior to the filing of the suit and the subsequent purchasers from the said Sathyadharan, including the respondents 1 and 2 herein. As the respondents 1 and 2 felt that it was a collusive *ex parte* decree obtained behind their back and their rights were at stake, they filed the above said I.A.Nos.1385 and 1386 of 2015 in O.S.No.1353 of 2008 to get themselves impleaded as party defendants and to enable them to get the *ex parte* decree set aside.

4. The counsel for the respondents 1 and 2 in drafting the applications has excelled the counsel for the plaintiff not in the right direction, but in the wrong direction by making a meaningless prayer. What the respondents 1 and 2 herein/petitioners in the interlocutory applications wanted was, to seek permission of the Court to file the application as a third parties to set aside the *ex parte* decree and also for their impleadment as party defendants in the above said suit. While coining the prayer in the application for impleadment, they have committed an error and thus they prayed for their impleadment as defendants, providing their ranking as Defendants 7 and 8. In fact, there were only two defendants including the deceased first defendant and the prayer ought to have been made either simply for their impleadment as defendants or with a specific indication that they

should be impleaded as defendants and ranked as Defendants 3 and 4. The said mistake was not noticed by the trial Court.

5. The counsel for the petitioners in these revisions in this Court also did not point out the said mistake to the Court below and the Court proceeded with the hearing of the applications and passed the impugned orders. While filing the revisions also, the learned counsel for the petitioners in these revisions has not noticed the defect and sought rectification of the order of the Court below and then present the revisions along with such rectified orders. On the other hand, the counsel for the revision petitioners proceeded on the assumption that there were 6 defendants originally and the proposed parties were directed to be impleaded and ranked as 7th and 8th defendants. The cause titles of the present revision petitions show such an impression in the mind of the counsel, who prepared the grounds of revision in both the Civil Revision Petitions.

6. The above said facts are pointed out to show how lethargic the legal fraternity in preparing the pleading, in verifying the pleading, in numbering the applications and in dealing with the applications and disposing of the applications without noticing such defects. By the

term legal fraternity, this Court means the members of the bar and also the judicial officer concerned.

7. Be that as it may, the said mistake is only a mistake committed in drafting and can be termed a clerical mistake. In essence, the prayer made by the respondents 1 and 2 herein before the trial Court was to set aside the ex parte decree dated 23.02.2010 made in O.S.No.1393 of 2008 and for their impleadment as defendants in the said suit. The Court ought to have considered the mistake and rectified the same while passing the order. But, unfortunately the same has not been done. On the other hand, the learned trial Judge, after assigning elaborate reasons for arriving at a conclusion that both the applications were bound to be allowed, concluded the common order observing "Therefore in the interest of justice, these petitions are allowed". At least the said mistake committed therein could have been corrected while drafting the decretal orders. So far as the decretal order in I.A.No.1386 of 2015 is concerned, there is no defect as it reads that the ex parte decree dated 23.02.2010 is set aside. But, while drafting the decretal order in I.A.No.1385 of 2015, the initial mistake committed in filing the petition came to be carried forward to the decretal order also, wherein, besides stating that the application

was allowed, it has also been stated as follows:

"that the proposed petitioners are hereby impleaded as 7th and 8th defendants in the above suit."

Here also, another mistake is found, namely the parties who were directed to be impleaded were the petitioners in the application, whereas the decretal order refers to them as proposed petitioners.

8. While going through the orders, this Court recollects the Shakespeare's words in Hamlet "something is rotten in the State of Denmark". It can be said that something is rotten in the trial Court, which is a part of judiciary. However, for the mistake committed by the trial Court and by the advocates, the parties should not be made to suffer, if they are otherwise entitled to the relief. In the background of the above said observations, the present revisions are approached.

9. The suit came to be filed by a person who alienated the suit properties in favour of the deceased first defendant Sathyadharan long back on 15.11.1980. Subsequent to the purchase, the above said Sathyadharan through his Power of Attorney, namely the second respondent herein (Sandeep Bhattad), conveyed the property to one Priya Kumar by a registered sale deed dated 14.12.1998. The said Priya Kumar, in turn, sold the property to the first respondent M/s.Kantha Bhattad under a sale deed dated 03.05.2007. The above

said suit came to be filed by Govindaraj against Sathyadharan alone for a bare injunction and after the death of Sathyadharan, Kalpana was impleaded without making the subsequent purchasers from Sathyadharan as party defendants. Under the said circumstances alone, the respondents 1 and 2 herein were forced to approach the trial Court with the above said applications to set aside the ex parte decree passed in the said suit in their absence and for their impleadment as party defendants. This Court is of the considered view that the reasons assigned by the trial Court for arriving at a conclusion that the ex parte decree was to be set aside at the instance of the respondents 1 and 2 in the revisions and for their impleadment as party defendants in the above said suit O.S.No.1393 of 2008 cannot be assailed as having any flaw in them. So also the result, except the mistakes that were found in the decreetal orders pointed out supra. The challenge made to the said order, in respect of form alone can be stated to be having substance, but in essence, the order is unassailable, if it is properly interpreted. The very attempt to convert the proceedings under Article 227 of the Constitution of India as an appeal against an order or a revision, which is not competent under Section 115 of the Code of Civil Procedure has to be checked.

10. For all the reasons stated above, this Court comes to the conclusion that though there are some mistakes in the description of parties, in essence, the order of the trial Court setting aside the ex parte decree dated 23.02.2010 and impleading the respondents 1 and 2 herein as party defendants cannot be interfered with and they are bound to be confirmed.

In the result, both the Civil Revision Petitions are dismissed with the modification of the decreetal order in I.A.No.1385 of 2015 to the following effect:

“The petitioners in I.A.No.1385 of 2015 are impleaded as party defendants in the original suit and ranked as defendants 3 and 4.”

No costs.

30.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

The District Munsif-cum-Judicial Magistrate Court
Sriperumbudur

P.R.SHIVAKUMAR.J.,

gpa

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