

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

Coram

The Honourable Mr.Justice RAJIV SHAKDHER
and
The Honourable Mr.Justice ABDUL QUDDHOSE

O.S.A.No.46 of 2017
and C.M.P.No.3915 of 2017

1. O.M.Subramanian
2. S.M.Meenakumari
3. R.Sornalatha
4. V.Visalatchi ... Appellants/Respondents/
Plaintiffs 3 to 6

N.Palani ... Respondent/Applicant/
Defendant

Prayer : APPEAL under Clause 15 of the Letters Patent read with Order 36 Rule 9 original side rules against the order passed by this court dated 23.08.2016 made Appl.No.7603 of 2014 in Tr.C.S.No.597 of 2010.

A.No.7603 of 2014: Application praying that this Hon'ble Court be pleased to direct the respondents to amend their plaint so as to include the two items of the properties, as detailed in the schedule annexed here under in Tr.C.S.No.597 of 2010, on the file of this Hon'ble Court.

Schedule of Property

Item I:

All that piece and parcel of the land and building bearing Door No.110 (Old No.91), Ayya Mudali Street, Chietadiripete, Chennai-2, comprised in R.S.No.339, measuring 2964 sq.ft, bounded on the

North by: Door NO.111, Ayya Mudali Street,
South by: Door No.109, Ayya Mudali Street

East by : Ayya Mudali Street

West by : Sri Adipureeswarar Temple Street Gangaikondan
Mandapam
situated within the Sub-Registration District of Periamet

and Registration District of Madras.

Item 2: All that piece and parcel of the land and building bearing Door No.67-A, 68 North Mada Street, Thiruvottriyur, Chennai-19, comprised in Village Natham S.NO.237-1, measuring East to West 20 feet, North to South 265 feet, bounded on the

North by: Nadapathai Thotta Cross Street

South by: North Mada Street

East by: House belongs to Ellappa Chettiar

West by: Group Houses belong to T.T. Narasimha Iyer

situated within the Sub-Registration District of

Thiruvottriyur and Registration District of Chengalpattu.

For Appellants : Mr.V.Raghavachari
for Mr.S.N.Kirubanandam

For Respondent : Mr.S.Subbiah
for Mr.P.Raja

J U D G M E N T

(Judgement of the Court was delivered by RAJIV SHAKDHER, J.)

1. This is an appeal preferred against the judgment and order passed by the learned Single Judge dated 23.08.2016, passed in applications bearing No.7603 to 7605 of 2014 preferred in Tr.C.S.No.597 of 2010 and TOS No.51 of 2001.

2. In so far as Application No.7603 of 2014 is concerned, the said application was moved by the respondent herein, i.e., original defendant, to seek amendment of the plaint by including therein two (2) items of properties, which are detailed out in the schedule appended to the judges summons in Tr.C.S.No.597 of 2010.

2.1. As regards Application No.7604 of 2014 is concerned, the prayer made therein is to receive additional written statement in Tr.C.S.No.597 of 2010.

2.2. The third application, i.e., Application bearing No.7605 of 2014, was filed by the respondent/defendant to seek permission to place on record additional documents in Tr.C.S.No.597 of 2010.

3. Mr.V.Raghavachari, who appears on behalf of the appellants/ plaintiffs, says that the appellants/plaintiffs are not aggrieved by the direction issued vide the impugned judgement and order vis-a-vis the third application, i.e., A.No.7605 of 2014.

3.1. Mr.Raghavachari, says that the impugned judgement is flawed to the extent it directs the amendment of the plaint at the behest of the respondent/defendant. For this purpose, he has drawn the Court's attention to Order 6, Rule 17 of the Code of Civil Procedure, 1908 (in short, "CPC").

3.2. Learned counsel stresses the fact that the expression used in the said provision allows for amendment of pleadings of the party, which has filed a particular pleading. For this purpose, learned counsel seeks to lay stress on the expression "his pleadings" used in Order 6, Rule 17 of the CPC. For the sake of convenience, the said provision is extracted hereafter :

"Order 6, Rule 17. Amendment of pleadings

- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

3.3. In support of this, learned counsel relies upon the judgment of a learned Single Judge of this Court rendered in : Ramasamy and Another V. P.Marappan and others, 2005 (3) MLJ 663.

4. On the other hand, Mr.Subbiah, who appears for the respondent/defendant relies upon the judgement of another learned Single Judge of this Court rendered in : A.A.Ganga and another V. A.R.Usha and others, 2010 (4) CTC 331. Mr.Subbiah, submits that in fact, a Division Bench of this Court in the case of : Solavaiammal V. Ezhumalai Goundar, 2012 (1) CTC 159, has upheld the view taken by Hon'ble Mr.Justice R.S.Ramanathan (as he then was), in A.A.Ganga and another V. A.R.Usha and others (cited supra).

5. In rejoinder, Mr.Ragavachari, submits that, even, if, this Court were to accept the view taken by the Division Bench in Solavaiammal's case, the amendments could still not have been permitted, if regard is added to paragraph 19 of the said judgement. It is the submission of the learned counsel that, if, there is a dispute between the parties, even in a partition suit, with regard to whether or not a

particular property is partible, then, the amendment cannot be allowed, at the behest of the opposite party. In this behalf, once again, learned counsel relies upon the expression "his pleadings" which obtains in Order 6, Rule 17 of the CPC.

6. Mr.Subbiah, on the other hand, says that in such a situation, the opposite party has three options in a partition suit. First, the party concerned can seek, an amendment in the plaint by persuading the Court to include a property, which has been unknowingly or knowingly omitted in the plaint. Second, claim the partition of the excluded property, by adverting to the same in the counter claim and seeking an appropriate relief of partition in that behalf. Third, file a separate suit with regard to the property, which is not included in the plaint.

6.1. Mr.Subbiah, on being pressed further submits, quite candidly, that the second and third options could also have been exercised without impacting the rights and the interest of the respondent/defendant.

7. Having heard the learned counsel for the parties and perused record as also the judgement of the Division Bench, we are of the view that, if, there is a contestation with regard to whether or not a particular property is partible, then, even in a partition suit, amendment cannot be ordered at the behest of the opposite party. The rationale of the Division Bench in coming to the conclusion, which it did, stems from the logic that in a partition suit, there is strictly no plaintiff or defendant.

7.1. The rationale, however, does not apply, as has been indicated in paragraph 19 of the very same judgement, where, there is contestation with regard to inclusion of the property in a partition suit.

8. Having regard to the aforesaid, we are of the view that this appeal can be disposed of with the following directions, in respect of which counsels for the parties are also agreed : (i) The respondent/ defendant will be at liberty to prefer an application to seek inclusion of properties referred to in Application No.7603 of 2014, as detailed out in the schedule appended to the judges summons in Tr.C.S.No.597 of 2010 in its written statement by way of a counter claim. (ii) The application, if any, will be moved by the respondent/defendant within a period of two weeks from the date of receipt of a certified copy of the order.

8.1. At this stage, Mr.Raghavachari, says if the respondent/ defendant files such an application, the appellants/plaintiffs will not oppose the same, with the caveat, though, that they be allowed to file their reply-statement to the counter claim.

8.2. The assurance given by Mr.Raghavachari is taken on record.

9. The appeal is disposed of, in terms of the directions set out above. Resultantly, pending application shall stand closed. The parties shall bear their own costs.

10. The amendment to the written statement will be allowed by the learned Single Judge as alluded to above, subject to payment of Court fee by the respondent/defendant.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar (Original Side),
High Court, Madras.

+ 1 cc to Mr.S.N. Kirubanandam, Advocate Sr.57063

+ 1 cc to0 Mr.Elizabeth Rani, Advocate SR.57013

O.S.A.No.46 of 2017

GR (CO)

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