

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(PD) No.3294 of 2007
and
M.P.No.1 of 2007

1.G.Murali
2.G.Balaji

.. Petitioners

vs

1.Minor Satheesh Kumar
2.Minor Praveen Kumar
rep. by next friend Pugazhendi
3.Vasantha
4.Selvi
5.Branch Manger,
Tiruvannamalai Distict Central Co-operative Bank,
Chengam.

.. Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 27.8.2007 made in I.A.No.222 of 2007 in O.S.No.261 of 2002 on the file of the Principal Subordinate Judge, Tiruvannamalai.

For Petitioners : Mrs.A.B.Reehana Begum
for M/s.T.R.Rajaraman
For Respondents : Mr.G.Rajan (for R1 & R2)
No Appearance (R3 & R5)
R4 - Died

ORDER

The petitioners have filed this Civil Revision Petition assailing the the fair and decretal order dated 27.08.2007 made in I.A.No.222 of 2007 in O.S.No.261 of 2002 on the file of the Principal Subordinate Judge, Tiruvannamalai.

2. The minor respondents 1 and 2, represented by their father Pugazhendhi are the plaintiffs, who filed the suit in O.S.No.261 of 2002 before the Principal Subordinate Judge, Tiruvannamalai, seeking partition of the suit properties into five shares allot one such share to them.

3. The plaintiffs have filed I.A.No.222 of 2007 under Order 6, Rule 17 CPC seeking to amend the plaint 'A' schedule alleging that the suit 'A' schedule totally measures about 1.32 acres. In the written statement, the defendants contended that the suit is bad for non-joinder of purchasers of a portion of the property from Gopalakrishnan. The plaintiffs are not claiming any right over the property already alienated by Gopalakrishnan. Describing the entire extent as suit 'A' schedule creates a legal flaw. Hence, they sought for amendment of the plaint 'A' schedule.

4. According to defendant Nos.2 and 3, prayer for amendment after the commencement of trial is barred by law and despite knowing the factum of alienation in suit item 'A' by Gopalakrishnan, the plaintiffs have purposely omitted to take steps to implead the alienees as defendants in the suit. To get over the defect that the suit is bad for non-joinder of necessary parties, the plaintiffs have filed the petition for amendment and the same cannot be entertained.

5. The trial Court, allowed the amendment petition, subject to payment of cost of Rs.1,000/- by the plaintiffs on or before 31.8.2007. Aggrieved by the same, the defendants 1 and 2 have filed the present Civil Revision Petition.

6. I heard Mrs.A.B.Reehana Begum for Mr.T.R.Rajaraman, learned counsel for the petitioners/defendants 2 and 3 and Mr.G.Rajan, learned counsel for the respondents 1 and 2/plaintiffs. No representation on behalf of the respondents 3 and 5.

7. Challenging the order of the trial Court, the learned

counsel for the defendants 2 and 3 submitted that the trial Court ought to have seen that the written statement was filed stating that the suit is bad for non-joinder of necessary parties even in the year 2005 and the minor plaintiffs' father has not taken any steps to restrict their prayer even thereafter till 2007 and all of a sudden, filed the petition seeking to amend the plaint 'A' schedule restricting to 1.10 acres and the trial Court erred in permitting amendment. The trial Court failed to see that there is no bona fide on the part of the plaintiffs to file amendment petition after five years from the date of suit. The learned counsel further submitted that the trial Court ought to have seen that the plaintiffs have filed the amendment petition to get over the admissions made by P.W.1 in his chief and cross-examination and thus, prayed for setting aside the order of the trial Court.

8. Per contra, the learned counsel for the plaintiffs 1 and 2 submitted that Court has got ample power to allow the amendment at any stage and finding that amending the extent of property would not affect the case of the defendants and hence, the trial Court allowed the amendment petition, stating that there is no illegality in the order of the trial Court and the learned counsel prayed for dismissal of the Civil Revision Petition.

9. I have considered the submissions made by the learned counsel appearing on either side and there was no representation for the respondent Nos.3 and 5 and the 4th respondent already died. I perused the materials available on record.

10. In the present case, the plaintiffs are minors and are represented by their father-guardian Pugazhendhi. According to the deponent of I.A.No.222 of 2007, he had instructed earlier the counsel to file the suit to an extent 1.10 acres and a copy of the plaint handed over to him contains the extent as 1.10 acres in schedule "A". Due to some problem, the earlier counsel handed over the bundle to him and he entrusted the matter to the present counsel. On 9.8.2007, the learned counsel for defendants 2 and 3 made his submission to the effect that the suit has been filed for the entire extent of 1.32 acres including the alienated portions. When he verified the Court records, the deponent came to know that the suit has been filed for 1.32 acres. Since the defendants are trying to non-suit the plaintiffs on the basis that even the alienated portion has been included in the plaint, the plaintiffs are praying to restrict their claim with regard to non-alienated portion of 1.10 acres and the trial Court rightly allowed the petition.

11. According to defendants 2 and 3, the minor plaintiffs father Pugazhendhi, who is looking after the case was very well knew about the alienations of part of the suit "A" schedule effected by defendants 2 and 3 and their father Gopalakrishnan. However, he has not taken steps to implead the alienees as defendant in the suit. According to the defendants 2 and 3, the trial Court had framed issues to the effect whether the suit is bad for non-joinder of necessary parties. The minor plaintiffs' father Pugazhendhi was examined as P.W.1 in the present case. To get over the defect that the suit is bad for non-joinder of necessary parties, the minor plaintiffs' father has filed the petition seeking permission to permit him to amend the plaint restricting the prayer to 1.10 acres and the trial Court erred in allowing such a belated petition.

12. The trial Court allowed the petition filed by the plaintiffs on the ground that amending the extent of property would not affect the genuineness of the Will and by way of this amendment, no fresh case was being introduced. The trial Court further held that though the plaintiffs included larger extent of property in the suit, subsequently, if the Court comes to the conclusion that they were

entitled to partition with reference to lesser extent, the Court has ample power to mould the relief. Under such circumstances, allowing the plaintiffs to amend the plaint, no prejudice would be caused to the defendants.

13. It appears that in the year 2005 itself, the defendants 2 and 3 have filed their written statement stating that the suit is bad for non-joinder of necessary parties and the trial Court had also framed issue regarding the above aspect to the effect "whether the suit is bad for non-joinder of necessary parties". It also appears that the trial has begun and the minor plaintiffs' father Pugalendhi was examined as P.W.1. However, after a prolonged period of two years that too after the commencement of trial, the plaintiffs have filed the petition seeking amendment of plaint "A" schedule restricting the extent to 1.10 acres for partition.

14. It is pertinent to point out that in the instant case both sides adduced oral and documentary evidence and in fact, on 09.8.2007, the defendants' side arguments was concluded and on 16.8.2007, when the suit was posted for arguments of plaintiffs, the plaintiffs have filed the application seeking amendment on 14.8.2007.

15. At this juncture, it is useful to refer the provisions Order 6, Rule 17 of C.P.C., which reads as under:

"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."

16. As per the proviso appended to Order 6, Rule 17 of CPC, 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.

17. In the instant case, as stated supra, in their written

statement itself, the defendants 2 and 3 have stated that alienations of part of the "A" schedule effected by the defendants 2 and 3 and their father Gopalakrishnan was known to the father of the minor plaintiffs. Based on the pleadings, parties have adduced evidence and trial has concluded. At this stage, if the extent of property as sought for by the plaintiffs was allowed to be amended, the entire evidence adduced on both sides would go away. Moreover, the proposed amendment would alter the character of the suit. However, without looking into all these things, the trial Court allowed the petition merely saying that by way of amendment, no fresh case was introduced and if the Court comes to the conclusion that the plaintiffs are entitled to partition with reference to lesser extent, at that stage the Court has to mould the relief. The trial Court further observed that if the petition for amendment is allowed, no prejudice would caused to the defendants. The said approach adopted by the trial Court is unsustainable.

18. In order to get over the defect that the suit is bad for non-joinder of necessary parties, the plaintiffs have filed the petition seeking amendment, which cannot be entertained. As stated supra, the proposed amendment would necessarily alter the character of the suit and thus, the trial Court erred in allowing the petition seeking

amendment of the plaint "A" schedule. In view of the above, there is no merit in the petition filed by the plaintiffs to amend the plaint schedule and the trial Court erred in allowing the said petition and the order of the trial Court is liable to be set aside.

19. In the result, the Civil Revision Petition is allowed thereby the order dated 27.08.2007 passed by the learned Principal Subordinate Judge, Tiruvannamalai is set aside. The trial Court is directed to dispose of the suit in accordance with law as expeditiously as possible. It is made clear that this Court has not expressed anything on the merits of the suit. No costs. Consequently, connected miscellaneous petition is closed.

14.11.2017

vs

Note: Issue order copy on 04.02.2019.

Index : Yes

To

The Principal Subordinate Judge,
Tiruvannamalai.

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M.V.MURALIDARAN, J.

VS



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