

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2363 of 2012
and
M.P.No.1 of 2012**

A.Abdul Nabi

.. Petitioner

Vs.

1.Dhanmanavatheeran @ Neil Naveen

2.M.Subramani

3.The Sub Registrar,
Jolarpet at Sub-Registrar Office,
Jolarpet, Vellore District.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree passed by the learned District Munsif, Tirupattur, Vellore District, dated 28.10.2011 in I.A.No.368 of 2011 in O.S.No.110 of 2010.

For Petitioner : Mr.K.Nagarajan

For Respondents : No Appearance

ORDER

The 2nd defendant in O.S.No.110 of 2010 is the revision petitioner. The brief facts of the case of the parties are necessary for the disposal of this Civil Revision Petition.

2.The 1st respondent herein as plaintiff filed a suit against the petitioner herein and respondents 2 and 3 herein in O.S.No.110 of 2010, on the file of the District Munsif, Tirupattur for permanent injunction restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment over the suit property and also for permanent injunction restraining the 3rd defendant from registering any document presented to him by the defendants 1 and 2 in respect of the property comprised in S.No.230/3C of Mettu Kannayur Village, Yelagiri Hill, Tirupathur Taluk.

3.According to the plaintiff, he has purchased the suit property under a registered sale deed dated 06.07.1998 and therefore he is in possession and enjoyment over the same as absolute owner. Since on 05.04.2010 the defendants 1 and 2 destroyed the construction put up by the plaintiff, the relief of injunction was sought for against the

defendants 1 and 2 by restraining them from disturbing the peaceful possession and enjoyment of the plaintiff and further restraining the 3rd defendant to register any document to be presented by the 2nd defendant/revision petitioner. The plaintiff came to know that the 2nd defendant has falsely averred that he has purchased the suit property in S.No.230/3C by mentioning wrong four boundaries under a registered sale deed dated 27.04.2007. Since the 2nd defendant claimed the suit property by referring the above said sale deed which necessitated the plaintiff to file an application for amendment in I.A.No.368 of 2011 under Order 6, Rule 17 of CPC seeking permission of the Court to include the relief of declaration. By way of the above said amendment the nature of the suit is not going to be altered and the cause of action will not be challenged.

4.The 2nd defendant/revision petitioner has filed counter affidavit and contented that the present amendment would change the character of the suit and the Court fee also will be changed. The revision petitioner further contented that by way of the proposed amendment the relief of deceleration to declare the sale deed dated 27.04.2007 is null and void cannot be entertained.

5.The trial Court after considering the facts and circumstances of the case was pleased to allow the amendment petition by order dated 28.10.2011, which is under challenge in this Civil Revision Petition.

6.I heard Mr.K.Nagarajan, learned counsel appearing for the petitioner and there is no representation on behalf of the respondents and the entire material records are perused.

7.While dealing the amendment application the Court has to consider whether the amendment is pre-trial or post trial and the second thing has to be considered is that by way of the proposed amendment the nature and character of the suit will be changed or not?

8.In the present case on hand, the amendment sought for by the plaintiff is a pre-trial amendment. This Court from the records able to see that the declaration relief sought for by the plaintiff is from the written statement of the 2nd defendant. Since the revision petitioner stated that he has purchased the suit property and he is in possession over the suit property, was necessitated the plaintiff to file the present amendment application.

9. In the considered opinion of this Court, the trial Court has rightly allowed the amendment application. As stated above, it is a pre-trial amendment and therefore the defendants are at liberty to file additional written statement for the relief of declaration. By allowing the amendment application filed by the plaintiff the multiplicity of proceeding could be avoided. By way of the above amendment no prejudice would be caused to the defendants. Since the title to the suit property is denied by the 2nd defendant and therefore it is for the plaintiff to prove his title by including the relief of declaration, to declare the sale deed of the 2nd defendant as null and void. Though the proposed amendment is allowed, the basic structure of the suit will not change. In this case, the lower Court has taken notice of the subsequent events and allowed the amendment application in order to shorten the litigation, to preserve and safeguard the rights of parties and to secure the ends of justice. The order of the trial Court is not suffered from any natural irregularities.

10. In view of the foregoing discussions, I do not find any merits in this Civil Revision Petition and the same is liable to be dismissed.

11.In the result:

a) this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.368 of 2011 in O.S.No.110 of 2010, dated 28.10.2011, on the file of the learned District Munsif, Tirupattur, Vellore District;

b) the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2017

Note:Issue order copy on 06.12.2017

vs

Speaking Order

Index:Yes

To

The District Munsif,
Tirupattur, Vellore District.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(PD)No.2363 of 2012
and
M.P.No.1 of 2012

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