

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM :

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.4021 of 2008

and

M.P.No.1 of 2008

Kannammal

... Appellant/Defendant

Vs.

1.Lakshmi Ammal

2.G.Chander

... Respondents/Plaintiffs

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of the Code of Civil Procedure against the judgment and decree order dated 23.04.2008 on the file of the learned Subordinate Judge, Vellore in A.S.No.63 of 2007 reversing the judgment and decree of the learned Principal District Munsif, Vellore dated 23.04.2007 in O.S.No.89 of 1996.

For Appellant : Mr.S.Aaravindan
for M/s.T.M.Hariharan & Aruna Ganesh

For Respondents : Mr.R.Margabandhu

This appeal is preferred by the defendant in O.S.No.89 of 1996 on the file of the Principal District Munsif court, Vellore, challenging the order of remand passed by the first appellate court in A.S.No.63 of 2007.

2. The short facts relevant for the purpose are that the respondents herein are the plaintiffs in O.S.No.89 of 1996, who have filed a suit for declaration of title and for recovery of possession. According to the plaintiffs/respondents the suit property was purchased by the first plaintiff and her husband Late.Veerassamy and that when Veerassamy moved over to Bangalore for eking out his livelihood, he put his brother Kattaiya and his wife in occupation of the suit property, and that such occupants are ascertaining title over the property and hence the plaintiffs have come forward with the suit for declaration of title and possession.

3. The appellant/defendant has set up an independent title as a defence to the plaintiffs' allegation and also added that

Veerasamy had three wives, and the children of other wives were not impleaded either as plaintiffs or as defendants in a suit for declaration of title. Without all the share-holders in the parties array, this suit is bad for non-joinder of necessary parties.

4. The trial court dismissed the suit and one of the grounds which the trial court relied on was non-impleadment of other heirs of Veerasamy. Indeed it has extracted a passage from the deposition of P.W.1 (the first plaintiff) wherein she had deposed that Veerasamy's first two wives had already died and that the first plaintiff was his third wife and he has children through the second wife, of whom second plaintiff is one and yet another child named Anjala was there, but she had died. Since the suit is one for declaration of title, it is law that settled the sharers interested in the property must be in the parties array and the trial court had rightly dismissed it. However, the trial court has not gone into the question of title of the plaintiffs anywhere. Challenging the decree of the trial court, the plaintiffs moved the first appellate court with A.S.No.63 of 2007. The learned Sub Judge, Vellore has remanded the matter with an intention to give the plaintiffs one more opportunity to implead the other heirs of Veerasamy and also to give them an opportunity to make necessary amendment in the pleadings and to record their evidence. This portion of the Appellate court order is now challenged by the defendant.

5. The learned counsel appearing for the appellant/defendant contended that the defendant had taken specific plea in the written statement that the other heirs of Veerasamy were necessary parties to the proceedings and in spite of that the plaintiffs have not chosen to implead them. Even before the first appellate court, they did not take any efforts to bring those legal heirs on record. Granting any further opportunities to the plaintiffs to implead such of the legal heirs of Veerasamy, who ought to have been impleaded even in the first instance will be an unmerited charity to the defendant and it also violates Order II Rule 2 of CPC.

6. Per contra, the learned counsel for the respondents submitted that it is due to inadequate access to quality legal assistance/aid, the plaintiffs did not implead the other legal heirs of Veerasamy and at any rate, the plaintiffs cannot be non-suited for under Order I Rule 9 CPC, no suit shall be dismissed for non-joinder of parties. That precisely is the correction the first appellate court has admitted, contended the counsel.

7. I find merit in the submissions of the counsel for the respondents/plaintiffs. Turning to the trial court judgment per se as I already mentioned, it has not pointedly discussed or dealt with the question of title of the plaintiffs and has dismissed the suit solely on the point of non-joinder of some of the legal heirs of Veerasamy. The question of title to suit property is yet to be decided. In this juncture, I do not find

Order II Rule 2 of CPC has any role to play. Order II Rule 2 CPC bars filing of any suit seeking a relief, the cause for seeking which has arisen from the cause of action of an earlier suit. In other words, where more relief than one can be sought under a same cause of action, the reliefs cannot be segregated leaving some of those reliefs for any future litigation, and if any relief which the cause of action supports is not so sought, then the plaintiffs forfeit the right to seek that relief in a fresh suit. Here, in this suit, there is only one cause of action and only one remedy is sought and there is no splitting up of remedies based on the same cause of action and all that is involved is impleading the parties who have the right.

8. As far as this appeal goes, the question of title is yet to be investigated and to that extent it can be said that the trial court has decided the case only on a preliminary point.

9. I find no merit in this appeal and the appeal is dismissed and the plaintiffs are directed to implead the other heirs of Veerasamy forthwith not later than four weeks from the date of receipt of a copy of this judgment, failing which, they forfeit all their rights to implead them and once impleaded, the trial court shall expedite the procedural process necessary to complete the trial and shall dispose of the suit within a period of four month from the date of such impleadment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To

1. The Judge,
Sub Court, Vellore.
2. The Principal District Munsif,
Principal District Munsif's Court,
Vellore.
3. The Section Officer,
VR Section,
High court, Madras.

+1cc to Mr.T.M.Hariharan, Advocate, S.R.No.1459

+1cc to Mr.R.Margabandhu, Advocate, S.R.No.2423

CMA.No.4021 of 2008

VGI (CO)

CA (28/02/2017)

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