

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

C.R.P.(PD) No.3407 of 2013 &
M.P.No.1 of 2013

Nagamuthu

.. Petitioner

Vs.

1.Balasubramanian
2.Karuppanan
3.Manoharan
4.Kamala
5.Chairman Subramanian
Bhavani Sagar Panchayat Union,
Sathyamangalam Taluk,
Erode District.
6.The Tahsildar
Taluk Office,
Sathyamangalam,
Sathyamangalam Taluk,
Erode District.
7.The Revenue Divisional Officer,
Revenue Divisional Office,
Gobichettipalayam Taluk.
Erode District.

..Respondents

This Civil revision is filed under Article 227 of the Constitution of India, against the fair order and final order dated 25.07.2013 passed in I.A.No.573/2013 in O.S.No.154 of 2009 on the file of the District Munsif Court, Sathyamangalam, Erode District.

For Petitioner : Mr. J.Titus Enocil
For Respondents 1 to 5 : No appearance
For Respondents 6 & 7 : Exparte

ORDER

The plaintiff in O.S.No.81/2009 on the file of learned District Munsif, Sathyamangalam, Erode District is the revision petitioner.

2 According to the plaint averments, plaintiff purchased the suit property in 1994 under a registered sale deed. Whiles, at the instigation of 5th defendant, who is Municipal Chairman, Bavani Sagar, the 6th defendant, the Tahsildar, Sathyamangalam transferred the patta with regard to the suit property in favour of defendants 1 to 4 and when the plaintiff appealed to 7th defendant/R.D.O, Gobichettipalayam he also did so.

3 In the circumstances, plaintiff instituted the said suit seeking a declaration that the suit property belongs to the plaintiff and direct the revenue authorities to cancel the patta granted in favour of defendants 1 to 4.

4 The main contestant is 1st defendant. He filed written

statement stating that the matter has already been adjudicated in O.S.No.16/2004 and also in A.S.No.45/2007.

5 Plaintiff filed I.A.No.573/2013 under Order XXIII Rule 1(3) CPC mainly contending that as the boundaries for the suit property has not been furnished and there is contention as to patta passbook Act. There is possibility of the suit being dismissed for certain formal defect, thus sought for permission to withdraw the suit, however, with liberty to institute a fresh suit on the same cause of action.

6 The 1st defendant filed counter opposing giving of liberty. The same has been adopted by defendants 2 to 5.

7 The Trial Court made elaborate discussion on the merits of the case and ultimately dismissed the said petition.

8 The learned counsel for the revision petitioner contended that the Trial Court has not appreciated the petition in proper perspective. The Trial Court mainly concentrated on the merits of the matter. While dealing so it has missed the crux of the matter.

9 I have anxiously considered the rival submissions, perused

the impugned order and the materials on record.

10 Plaintiff is the master of the plaint. He is the author of the plaint. He is the brain behind the plaint. He is dominantlites. If he wants to walk out of the court nobody to prevent him. Infact, if it is so, defendants will be happy because his opponents has left him. The Court is relieved from one case and its statistics also get reduced. But the problem arises when the plaintiff asked for liberty, leave to file a fresh suit on the very same cause of action. It is nothing, but for the present bidding good-bye to the defendant and to the Court however, will emerge again and vex the defendants.

11 Order XXIII, Rule 1 (3) C.P.C is based on public policy and also it intends to prevent abuse of process of court. It aims to see that a litigant should not be a trouble maker and should not harass the defendant again again.

12 The liberty sought is considered under two circumstances. Firstly, if the suit is likely to be dismissed on account of some formal defect and secondly for any sufficient ground. This is condition precedent to grant liberty. It is the duty of the petitioner/plaintiff to bring his case under either one of the clauses, namely, Clause-(a) or

(b) of Order XXIII Rule 1(3) CPC.

13 Now, in this case, plaintiff instituted the suit based on his title deeds. Patta granted with regard to suit property to defendants 1 to 4 by the defendants 6 and 7 has become a grave concern for defendants 1 to 4 as challenges the title of the plaintiff.

14 Boundaries for the 3 items of the suit property has not been given in the suit. In his affidavit, the plaintiff had stated that the boundaries of the suit property is required to be stated but failed to furnish it and there is risk of suit being dismissed for this defect.

15 In a civil case, more particularly relating to property and particularly seeking relief with respect to properties full details of the suit property should be given. Boundaries of the suit property is required to be given. Otherwise, problem and complications will arise. The identification of the suit property is very important. If decree is granted, it will not be a workable decree. On account of this defect, possibility of the suit being dismissed cannot be ruled out. Thus, it is a formal defect. In such view of the matter, the reason stated for seeking liberty in this case will fall under Order XXIII Rule 1(3)(a) CPC.

16 Instead of analysing the reason stated in the affidavit in this manner, the Trial Court went astray, gone out of the scope of the suit, failed to grapple the grip of the matter. Instead of getting hold of the head it has caught hold of the tail and consequently, the Trial Court has fell into error. Thus, the impugned order is unsustainable.

17 As per Order XXIII Rule 1(3)(a) CPC, the liberty can be given upon certain terms and conditions.

18 Ordered as under:

(i) This revision succeeds.

(ii) The impugned order passed by the learned District Munsif, Sathyamangalam in I.A.No.573/2013 in O.S.No.154/2009 is set aside.

(iii) Liberty is granted to the plaintiff to institute a fresh suit on the same cause of action.

(iv) Within three months from the date of receipt of a copy of this order, the plaintiff shall institute the fresh suit.

(v) Consequently, the connected miscellaneous petition is closed.

(vi) However, no order as to cost in this revision.

12.04.2017

Speaking/Non Speaking order

Index : Yes / No

Internet : Yes / No

uma/klt

To

1. The Principal District Judge,
Erode.

2. The District Munsif,
Sathyamangalam,
Erode District.

DR.P.DEVADASS, J.,

uma/klt

C.R.P.(PD) No.3407 of 2013 &
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Dated: 12.04.2017