

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2017

CORAM:

THE HON'BLE MR.JUSTICE P.DEVADASS

CRP(NPD). No.3549 of 2013 and M.P.No.1 of 2013

1. Rukmani
2. Kavitha .. Petitioners/Plaintiffs/Petitioners

Vs.

1. Natesa Pandidar
2. Ramesh
3. Loganathan
4. Vijaya .. Respondents/Defendants/Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and and decretal orders dated 31.7.2013 in I.A.No.604 of 2010 in O.S.No.68 of 2001 on the file of the Subordinate Court, Vellore.

For Petitioner	: Mrs.A.Kundavai for Mr. S.S. Raghavan
For Respondent	: No appearance

ORDER

This revision is at the instance of the plaintiffs.

2. This revision is directed as against the dismissal of I.A.No.604/2010 in O.S.No.68/2001 by the learned Subordinate Judge,

Vellore which was filed to amend the plaint.

3. Govindarajan Pandidar is the husband of first plaintiff and father of the second plaintiff. Govindarajan Pandidar's brother is first defendant. Defendants 2 to 4 are children of the first defendant. Govindarajan Pandidar is no more.

4. Seeking division of joint family properties by metes and bounds, the legal heirs of late Govindarajan Pandidar/plaintiffs have filed O.S.No.68 of 2010 in the Sub Court, Vellore.

5. The defendants have filed written statement resisting the claim of the plaintiffs.

6. Subsequently, the plaintiffs came to know that there was a family arrangement between Govindarajan Pandidar and the first defendant, also called 'koor chit', which was unregistered and under which item No.1 was allotted to the first defendant while item No.2 was allotted to Govindarajan Pandidar.

7. In the circumstances, plaintiff wanted to plead, in case their case of division of property on the basis of joint family property fails, they may be allotted property based on the arrangement under the said koor chit. Accordingly, they wished to amend the plaint by including certain portions in the body of the plaint, make alternative prayer in the prayer column and accordingly, value the suit and pay the Court Fee. This amendment was opposed to by the defendants.

8. After hearing both sides, the trial Court dismissed the amendment petition on the ground that if this amendment is allowed, altogether, a new case will be introduced in the plaint.

9. I have anxiously considered the submissions of the learned counsel for the revision petitioner and referred to the counter filed by the respondents in the trial Court, the impugned order and the materials on record.

10. Pleadings in a civil case generally means plaint pleadings and the counter pleadings/written statement. In a civil case, claim to money or property must be pleaded and proved. In the absence of plea, no evidence will be let in. Thus, parties comes to the civil court

with specific/necessary pleas. Sometimes they start pleading mutually destructive of their pleadings. It is in a way of blowing hot and cold at the very same time. Courts will not encourage such kind of confusing pleadings. But at the same time, a specific plea has been made in the plaint and accordingly, relief is sought for, sometimes they can also plead alternatively and in case, their alternative plea is accepted, they may be granted relief accordingly. It is also some sort of lottery. Thus, putting up an alternative case, in other words, pleading alternatively. It is not uncommon in civil pleadings.

11. For a long time Courts simply went by the pleadings, even blind foldedly. Slowly, some relaxation in the strict rules of civil pleadings gradually developed. The rules of pleading have gradually undergone a change.

12. Parties come to the Court with a specific case/plea making appropriate averments in the plaint and adduces evidence. Suppose they put up one case, but the evidence adduced establishes another case, of course, there is no change in the basic pleadings even then, there is possibility of giving relief on the basis of established fact/case. Although, there was no sufficient pleadings, the Courts started

moulding the reliefs accordingly. Even if it results in paying of more Court Fee, Court can direct the party to pay the Court Fee. The motto is rendering of justice to the parties and not vice versa. In the illustration I gave, 'if simply the Court dismisses the suit on the ground that the plaintiff has pleaded one case, but through evidence proved another case, though the Court can give relief but, no plea and no prayer so the Court could not give relief, then it is not advancing cause of justice, sometimes it may also results in miscarriage of justice. It becomes waste of public time, public money and waste of Court Fee paid.

13. This judicial thinking signals development of law. It is all march of law. Procedural law also should be dynamic. And it should not be static. Parties comes to the court to establish their right and enforce others' liability under relevant substantive law. They are not coming to Court to enforce the procedural (Civil Procedure Code) or any Adjective Law (Evidence Act). After all procedural law is a means to reach the end and not end itself. It is a handmaid of justice and not justice itself. Out-moded laws must go away and progressive thinking must come in and developed with a view to give justice/relief to the eligible parties.

14. In the facts and circumstances of the case, I am fully convinced that there is no flaw in permitting the plaintiffs to plead alternatively.

15. In view of the foregoings, ordered as under:

(i) This revision succeeds;

(ii) The order and decretal order passed in I.A.No.604/2010 in O.S.No.68/2001 by the learned Subordinate Judge, Vellore are set aside.

(iii) I.A.No.604/2010 (amendment petition) allowed;

(iv) The plaintiffs will carry out the consequential amendment in the plaint and also will file clean/amended copy of the plaint.

(v) The defendants shall be given opportunity, if they wish to file additional written statement;

(vi) Payment of Court Fee, if any payable, on account of the amendment shall be calculated and shall be paid by the plaintiffs within

a time to be fixed by the trial Court.

16. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Kua
Index: Yes/No

14.3.2017

To

1. The Principal District Judge, Vellore.
2. The Sub Judge, Vellore.

Copy to

1. The Registrar (judicial),
High Court, Chennai.
2. The Director,
Tamil Nadu State Judicial Academy,
Greenways Road, Chennai-28.

P.DEVADASS,J

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