

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2017

CORAM

THE HONOURABLE MR.JUSTICE Dr.P.DEVADASS

Civil Revision Petition (PD) No.3738 of 2013

and

M.P.No.1 of 2013

T.Natarajan

... Petitioner

vs

1.A.Pannerselvam

2.The Secretary,
Co. Operative Building Housing
Society, H.H.80,
Chengam.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 19.09.2011 in I.A.No.229 of 2011 in O.S.No.205 of 2006 on the file of the District Munsif cum Judicial Magistrate, Chengam.

For Petitioner : Mr.S.Kumaresan

For Respondents : Mr.P.Mani

ORDER

This is first defendant's revision.

2. This revision arises out of allowing the amendment petition in I.A.No.229 of 2011 in O.S.No.205 of 2006 on the file of the learned District Munsif cum Judicial Magistrate Court, Chengam, Thiruvannamalai District.

3.The plaintiff and the first defendant were friends. Now they are at their logger heads. It is all for property. The plaintiff laid up the suit in O.S.No.205 of 2006 pleading that the plaintiff and the first defendant have jointly acquired several items of the properties fully described in the suit "A" schedule appended to the plaint. It is also pleaded that they have raised loans from the second defendant. The details of the same are also furnished in plaint "B" schedule. On these pleadings, the plaintiff had sought for division of his share of the properties.

4.The first defendant filed written statement resisting the claim of the plaintiff contending that the property was entirely acquired out of his own money. He only paid the installments. The first defendant has been just

added for name sake and he has no right, title and interest in the property. He cannot have an eye on the first defendant's property. Necessary issues were framed. The suit was put on trial. The plaintiff entered the witness box and deposed as PW1. Thereafter, the trial was struck because of I.A.No.229 of 2011 filed by the plaintiff to amend the plaint.

5.The said Interlocutory Application has been filed by the plaintiff for correcting certain errors crept in in mentioning the suit survey number relating to certain properties described in plaint "A" schedule. This was countered by the first defendant as a delaying tactics and it will also change the nature and character of the suit.

6.The trial court after hearing both sides, satisfied with the reasons stated in the affidavit filed by the plaintiff allowed the amendment petition. The amendment also has been carried out in the plaint and a copy of the amended plaint also has been filed. Dissatisfied with the decision of the trial Court, the first defendant has directed this revision.

7.The learned counsel for the revision petitioner/ first defendant reiterated the very same contentions which were placed before the trial

Court. The learned counsel for the revision petitioner further contended that there is a legal bar in allowing the amendment petition. He would submit that once the trial is commenced, this kind of amendment shall be denounced.

8. In this connection, the learned counsel for the revision petitioner invited our attention to Order VI, Rule 17 CPC.

9. On the other hand, the learned counsel for the plaintiff contended that a close reading of the said provision would not restrict nor shut out completely, raising of additional pleadings or amending the pleadings by either party, when the Court is satisfied with the reasons stated.

10. The learned counsel for the respondent would submit further that in this case the plaintiff came across a typographical error in mentioning the survey number after filing the suit. This is a very important aspect. The suit prayer is based on the survey numbers of the suit properties. According to the plaintiff, only after the trial was commenced, he could discover the said discrepancy. In such circumstances, the trial court has satisfied with the reason adduced. In such circumstances, Order VI, Rule 17 of CPC, is not applicable to this case.

11. I have anxiously considered the rival submissions and perused the impugned order and also referred to the provisions of CPC quoted by both sides.

12. Necessary factual matrix has already been stated succinctly. Let us not duplicate them.

13. In an interim Application/ Amendment petition itself, there shall not be a "mini trial". No trial within a trial. Now the crux of the matter is that there is a mistake in the survey numbers mentioned in plaint "A" schedule property which came to light when the suit was put on trial.

14. As the learned counsel for the plaintiff had found the mistake, he has taken steps to get rid of this muddle. Thus, he has filed the amendment petition. He has furnished the reasons for having taken such a step at this stage of the suit by filing an affidavit of the plaintiff. The trial court had also satisfied with that.

15. As rightly pointed out by the learned counsel for the

plaintiff/respondent that there is scope for accommodating this kind of amendment under Order VI, Rule 17 of CPC, I do not find any flaw in the impugned order. There is no need to interfere with it.

16. In view of the foregoing, it is ordered as under:

(a) This revision fails and it is dismissed.

(b) However, in the circumstances, no order as to costs.

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

22.03.2017

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Index:yes/no

Internet:yes

To

1. The Principal District Judge,
Thiruvannamalai.

2. The District Munsif cum Judicial Magistrate,
Chengam.

Dr.P.DEVADASS,J.

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