

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.55 of 2013
and
M.P.No.1 of 2013**

C.Sekar

.. Petitioner

Vs.

M.Sankar

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of dismissal of I.A.No.1478 of 2012 in O.S.No.70 of 2008, dated 29.10.2012, on the file of the Principal District Munsif Court, Tindivanam.

For Petitioner : Mr.R.Munuswamy

For Respondent : No Appearance

ORDER

The sole plaintiff is the Revision Petitioner before this court as his application filed under Order 6 Rules 16, 17 of the Civil Procedure Code for the amendment of pleadings was dismissed by the learned trial Court.

2.The short facts of the case are as follows:

The Revision Petitioner/Plaintiff filed an original suit for the relief of declaration and injunction and for cost of the suit. When the suit was pending, the Plaintiff filed an application and sought for certain amendments in the respect of the pleadings. In the said application, the Respondent/Defendant filed counter statement contending that the suit is about to attain its finality and the same is posted for arguments on the side of the Petitioner/Plaintiff. Earlier on either side examination of witnesses was over. So, the belated application for amendment of pleadings with intention to fill up the lacunas is not entertainable.

3.Further, it is specifically contented that the amendments sought for are to introduce new facts which were not pleaded in the plaint and did not depose in the evidence. Hence, he prayed for the

dismissal of the application of the amendment of pleadings.

4.By considering the rival submissions, the learned trial court did not accept the reasons adduced by the petitioner and dismissed the same on 29.10.2012. Feeling aggrieved over the order passed by the learned trial court, the Plaintiff/Petitioner has preferred the instant Civil Revision Petition.

5.I heard Mr.R.Munuswamy, learned counsel appearing for the petitioner. No representation for the respondent and perused all the materials available on records.

6.The specific case of the petitioner is that the suit is filed for the larger relief of declaration and injunction. Further the facts pleaded in the suit are that the same belonged to one Ethirasu Ammal. She gifted the same to her daughter namely Senthamarai Ammal as marriage gift. However, it is pleaded that the said Ethirasu Ammal enjoyed the suit property. After the death of her husband and on 09.06.1987 she transferred the title of the property to the grandson of her deceased son namely Thanikkasalam and also in favour of her son namely Shanmugam.

7.Further, the said Ethirasu Ammal retained the remaining property and executed the registered gift deed on 25.09.1987 by way of gift settlement and thereafter the said Senthamarai Ammal was died on 1987. So, the said Senthamarai Ammal bequeathed the property by will also. Apart from that on 06.11.2007 the said Senthamarai Ammal entered into a sale agreement with the petitioner but she turned down from the contents of the sale agreement. By mentioned all the facts petitioner caused legal notice on 10.07.2007 to the respondent and the same was received on 13.07.2007.

8.Further, on 17.12.2007 the Respondent/Defendant entered into a sale deed with an Ayyanarappan, S/o. Thanikkasalam. As due to inadvertence, all these facts did not include in the pleadings of the plaint.

9.But the learned trial court has held that as the Petitioner/Plaintiff was unable to ascertain the fact that whether the said Ethirasu Ammal executed a will or settlement is not correctly pleaded. Further, as the suit is about to attain its finality, so, the petition filed for the amendment of pleadings is liable to be dismissed.

However, the learned trial court is failed to consider that the proposed amendment sought for by the Revision Petitioner as the proposed amendments have not changed the character of the suit. Moreover, it is for the trial court to decide whether the said (Ethirasu Ammal) executed will or settlement only by way of full-fledged trial by allowing the parties of the suit to adduce evidence. Such an exercise would be a meaningful full-fledged trial. Further, for the useful reference Order 6 Rule 17 of the Civil Procedure Code is reproduced here under:

Amendment of Pleadings:- The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

10. Under the above provision of law it is for the court to decide

that in spite of due diligence the party could not have raised the matter before the commencement of trial. However, it is for the plaintiff to plead all the factual aspects in the plaint. As for as the suit for declaration is concerned the application may be allowed if such amendments are not changed the character of the suit. Here in the considered opinion of this court nowhere, it is found that the amendments sought for would change the character of the suit. Hence this court is no option except to allow the Civil Revision Petition by setting aside the order of the I.A.No.1478 of 2012 dated 29.10.2012.

11.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order in I.A.No.1478 of 2012 in O.S.No.70 of 2008, dated 29.10.2012, on the file of the Principal District Munsif, Tindivanam;

(b) the trial Court is directed to amend the plaint and the plaintiff is hereby directed to file the amended plaint within a period of 15 days from the date of receipt of a copy of this order;

(c) thereafter, the defendant is permitted to file any reply written statement, if any within a period of 15 days;

(d) thereafter, the trial Court is directed to dispose of the suit within a period of four months. No cost.
Consequently, connected miscellaneous petition is closed.

31.01.2017

Note: Issue order copy on 20.04.2017

Internet: Yes

Index: Yes

vs

To

The Principal District Munsif Court,
Tindivanam.

M.V.MURALIDARAN, J.

VS

**CRP(PD)No.55 of 2013
and
M.P.No.1 of 2013**

31.01.2017

<http://www.judis.nic.in>