



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2017
(Reserved on 11.04.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (PD) (MD) No.1842 of 2015
and
M.P (MD) No.1 of 2015

Murugan

... Petitioner

vs.

- 1) Pachiamal @ Paulraj Nadar
- 2) The Sub Registrar,
Office of the Sub Registrar,
Radhapuram Taluk,
Tirunelveli District.
- 3) Government of Tamilnadu,
Rep by its District Collector,
Kokkarai Kulam,
Tirunelveli District.

... Respondents

Petition filed under Article 227 of the Constitution of India, against the judgment and decree dated 06.07.2015 made in I.A.No.946/2015 in O.S.No.267/2010 on the file of the learned Principal District Munsif Court, Valliyoor, Tirunelveli District.

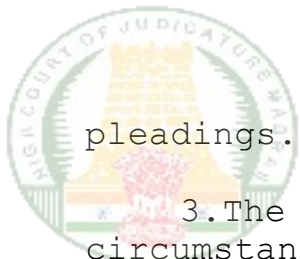
For Petitioner : Mr.C.Jeganathan for
M/s.Veera Associates

For R1 : Mr.J.Ashok for M/s.Jeyapaul Associates

ORDER

This revision petition is directed against the dismissal of I.A.No.946/2015 in O.S.No.267/2010 filed by the plaintiff for withdrawal of the suit with liberty to file a fresh suit.

2. According to the revision petitioner, his suit filed for declaration was taken up for trial after completion of pleadings. One Ratheesh who is the vendor of the suit property was examined as PW2 on his behalf. He has revealed certain important facts which were not pleaded in his plaint. Therefore, in the absence of pleading those important facts, he cannot succeed in the suit. Therefore, he must be permitted to withdraw the suit with liberty to file a fresh suit rectifying the formal defect in his



pleadings.

3.The Trial Court, after making a detailed research on the circumstances under which such leave can be granted, has held that under Order 23 Rule 1 CPC, the Court can permit to withdraw the suit with liberty to institute a fresh suit for the subject matter of the suit or part of the claim, if the Court is satisfied that there are sufficient grounds for allowing the plaintiff to do so and if such liberty is not granted, the suit will fail for reason of formal defect, but in the present case, the facts do not satisfy the requirements to permit the withdrawal of suit with leave to file fresh suit.

4.The Trial Court has found that the defect pointed out is not a formal defect, but an attempt to agitate a new cause with liberty of the Court which is not permissible since the trial in this case has commenced and gone a long way.

5.The learned counsel for the revision petitioner strenuously argued that by giving liberty to withdraw the present suit and to file a fresh suit, no prejudice will be caused to the respondent and therefore, the order of the Trial Court rejecting the permission to withdraw and refusing liberty to file a fresh suit is erroneous.

6.Per contra, the learned counsel for the 1st respondent submitted that there is error or illegality in the impugned order.

7.The revision petitioner has filed O.S.No.267/2010 against one Pachaimal alias Palraj Nadar, the Sub Registrar, Radhapuram Taluk, and the District Collector, Tirunelveli District, alleging that the suit property was originally owned by one Perumal Nadar, based on the power of attorney document executed by him, the same was sold to one V.G.Raman whose power of attorney subsequently sold the suit property to J.Regis, who in turn, sold it to R.Ashokan. Thereafter, R.Ashokan sold the property to M/s.Vestas RRP India Ltd., which was purchased by one Arul Prakash, who sold it to M/s.Ranu Foundation and this plaintiff has purchased the suit property from M/s.Ranu Foundation vide sale deed dated 29.10.2009. While so, the 1st defendant/1st respondent is trying to alienate the property and get it registered at the 2nd defendant Registrar Office.

8.The revision petitioner has impleaded the District Collector, Tirunelveli, on the premise that the 2nd defendant Sub Registrar, Radhapuram Taluk, is subordinate to the District Collector and the relief sought in the suit is for declaration of title and permanent injunction restraining the 1st defendant from alienating the property and permanent injunction restraining the 2nd defendant from registering the sale deed., hence, he is a necessary party.



9. After filing of the written statement, the suit has been taken up for trial and in the course of the examination of the witness, PW2 who is the alleged vendor of the plaintiff, has deposed tracing the title of the suit property. The evidence of PW2 gone fatal to the case of the plaintiff. Therefore, he has initially filed an application in I.A.No.849/15 to eschew the evidence of PW2. The Trial Court has dismissed that application. Thereafter, realising the fact that the said suit cannot sustain based on his pleadings and the evidence of his own witness examined as PW2, without disclosing the above fact, the revision petitioner through dubious way of causing inconvenience to the defendants, has filed the present application under Order 23 Rules 1 and 3 to withdraw the suit with liberty to file a fresh suit, as if his pleadings suffers formal defect.

10. At this juncture, it is relevant to extract below Order 23 Rule 1(1) and (3) CPC.

'1. Withdrawal of suit or abandonment of part of claim—

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.'

11. Firstly, the revision petitioner has not disclosed the fact of dismissal of his I.A.No.849/15 to eschew the evidence of his own witness PW2. Secondly, after the commencement of trial, after marking as many as 11 documents and also after completion of cross-examination of PW2, present application has been filed. The Court below has rightly considered the facts of the case and held that there is no formal defect in the pleadings which will entail the plaintiff to withdraw the present suit and to file a fresh suit.

12. In the present case, the very basis of the plaint itself has been demolished. In the cross examination of PW2, the title of



the plaintiff over the suit property as pleaded by the plaintiff is found to be incorrect. There is substantial suppression of fact in the pleadings which has been exposed through the evidence of PW2 and through the exhibits marked during the cross-examination of PW2. Therefore, Order 23 Rule (1) CPC cannot be pressed into service which is applicable and restricted only in case of formal defect.

13.The evidence so far let in has proved that the plaintiff has purchased the suit property from M/s.Ranu Foundation and on the same date, he has sold 10 cents out of the total extent to M/s.Renu Foundation itself. The plaintiff without disclosing those facts, has filed the suit and has conducted the trial. Therefore, it is too late for him to revert back and seek leave of the Court to rectify the lacuna and to fill up the vital facts suppressed by him in the present suit by way of getting liberty to a file a fresh suit. If such a request is acceded, it will amount to giving concession to the revision petitioner who has suppressed the vital facts. When his dubious design of suppression of facts got exposed during the cross-examination of his own witness PW2, he has filed the present application.

14.The provision which is meant for assisting the innocent litigant who has committed error inadvertently allowing formal defect crept in his pleadings cannot be extended to a dubious litigant who wantonly and wilfully suppressed the facts within his knowledge and thereafter try to cover up the lacuna after the true facts being exposed by the witness.

15.In the case on hand, the revision petitioner may not lose his suit not due to formal defect. If the evidence of PW2 is accepted by the Court, then, the suit will suffer suppression of material facts regarding alienation of the portion of the suit property by the plaintiff himself. This suppression of fact is by no stretch of imagination could be considered as formal defect.

This Court finds no merit in the revision petition. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif Court,
Valluvoor,
Tirunelveli District.



+1 cc to Mr.Veera Associates , Advocate in SR.No. 51980

+1 cc to Mr.J.Ashok , Advocate in SR.No. 51583

nbi

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Pre-Delivery order made in
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13 .04.2017