



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**C.R.P. (MD) No.1102 of 2017 (PD)****and****C.M.P (MD) .No.4929 of 2017**

1.Muthiah

2.Alamelu

3.L.Laksman

4.Periakaruppan @ Subramanian

... Petitioners/Petitioners/
Appellants

Vs.

A.Perumal

... Respondent/Respondent/
Respondent

PRAYER: The Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order, dated 24.01.2017 in I.A.No.158 of 2014 in A.S.No.61 of 2012, on the file of the learned Subordinate Judge, Sivagangai and set aside the same.

For Petitioners : Mr.A.L.Kannan

For Respondent : No Appearance

ORDER

The Civil Revision Petition in CRP (MD).No.1102 of 2017 has been filed, under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order, dated 24.01.2017 in I.A.No.158 of 2014 in A.S.No.61 of 2012, on the file of the Subordinate Judge, Sivagangai and set aside the same.

2.Application filed before the First Appellate Court to amend the plaint by including declaratory relief was dismissed by the First Appellate Court. Hence, the present revision petition preferred by the aggrieved plaintiff / appellant / revision petitioner.

3.According to the revision petitioner, the bare injunction suit was filed by him was dismissed by the Trial Court. While dismissing the suit, the Trial Court had gone beyond the scope of the suit and decided the title over the suit property. Hence, the appeal has been preferred. Pending appeal to avoid



multiplicity of proceedings and further litigation an application under Order 6 Rule 17 of CPC was filed to amend the plaint by including the relief of declaration regarding the title over the suit property.

4. The learned counsel appearing for the revision petitioner submitted that there is no document regarding the title in favour of the defendant. In the suit for permanent injunction filed by plaintiff the Trial Court has held the title in favour of the defendant and also erroneously held that the possession is also with defendant. Aggrieved by the said finding the first appeal has been preferred to establish neither the title nor the possession is with the defendant and the Appellate Court has erred in concluding both the possession and title in favour of the defendant.

5. Since, the Trial Court has gone extensively regarding the title of the property based on the earlier proceedings in O.S.No.187 of 1942 it has now become necessary for the plaintiff to amend the plaint regarding the relief at the appeal stage.

6. This Court has anxiously gone through the pleadings, judgement of the Trial Court, the request of the revision petitioner to amend the prayer and the order passed by the First Appellate Court which is impugned in the revision petition before this Court. The suit for bare injunction has been filed by the revision petitioner claiming that the suit property has been inherited by them through ancestors. This has been categorically opposed in the written statement filed by the defendant and brought to the notice of the Trial Court regarding certain judicial proceedings omitted to be referred by the plaintiff.

7. In the light of the pleadings, the Trial Court has framed four issues, out of which the third issue is regarding the possession and enjoyment of the suit property. For the said issue, the Trial Court has held that the defendant has proved his possession and enjoyment of the suit property which disentails the plaintiff seeking relief of injunction. No doubt, the Trial Court has also gone into the title over the property and it has given its own justification for probing into the title incidentally which is now matter for adjudication before the First Appellate Court.

8. At this juncture, the request to amend the plaint to the effect to declare the title of the suit property will change the facet of the litigation. Therefore, the Trial Court after considering the plea has dismissed the application filed under Order 6 Rule 17 of CPC on the ground that the proviso to the said application for amendment shall be allowed after the Trial has commenced, unless the Court comes to the conclusion that in respect of the due diligence, the party could not have



raised the matter before the commencement of the Trial.

9. In this suit, the Trial Court has pointed out that the defendant has denied the title of the petitioner at the earliest point of time, through their written statement and Trial Court has also framed issue regarding suppression of suit in O.S.No.187 of 1942 where the title of the suit property has been discussed. Therefore, in spite of questioning the title, the party has not shown due diligence to seek declaration. Since, there is no valid reason for the failure to seek amendment of the plaint before the Trial Court, the said relief cannot be granted at the appeal stage to fill up the lacuna.

10. The learned counsel for the revision petitioner submits that without any document pertaining to title, the Trial Court has held the title in favour of the defendant. This Court cannot comment about the reasoning of the Trial Court when its vires is under challenged before First Appellate Court. It is for the revision petitioner as appellant before the First Appellate Court to canvas this point and convince the Appellate Court.

11. This Court finds no error or illegality in the said impugned order. It is totally in consonance with the provisions of CPC governing procedure relating to amendment of plaint. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Sivagangai.

+1 cc to Mr.VR.Shanmuganathan , Advocate in SR.No. 59683

skm/dsk
AE/JC/SAR1/21.06.2017/3P/3C

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and
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