IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 06TH DAY OF FEBRUARY 2018

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A. No.7251 of 2017
in
C.S. No.237 of 2012

Mrs.S.B.Jeya Bhama,
W/o.C.S.Baskar,
No.29/1, Venkatachala Street,
West Mambalam, Chennai-600 033
rep. by her Power Agent,
Mrs.Indira Narasimhan,
W/o.S.Narasimhan,
No.66/401, Pantheon Road,
Egmore, Chennai-600 008. ... Applicant/Plaintiff

-Versus-

1. K.Dhanalakshmi,
   W/o.R.S.Kothandaraman,
   No.110, Naidu Street,
   End of 4th Main Road,
   Kotturpuram, Chennai-600 085.

2. M/s.Saravana Foundation Limited,
   rep. by its Director, R.J.Jayanthilal,
   No.15, New Giri Road,
   T.Nagar, Chennai-600 017.

3. The Member Secretary,
   Chennai Metropolitan Development Authority,
   Thalamuthu Natarajar Maaligai,
   Egmore, Chennai-600 008.

4. The Commissioner,
   Corporation of Madras,
   Rippon Buildings, Chennai-600 003.

5. The Sub Registrar,
   T.Nagar Sub Registrar Office,
   Saidapet, Chennai-600 015. ... Respondents/Defendants

Application praying that this Hon'ble Court be pleased to amend the plaint by including the following alternative prayer in respect of relief Prayer "D"

Alternative prayer

directing the second defendant their men, agents, servants etc., to deliver the vacant possession of the suit property to the plaintiff morefully described in the plaint schedule, after removing all the offending construction if any put up by the second defendant at their own costs and on their failure to do so permit the plaintiff to remove the offending construction and recover the costs from the second defendant.

This Application coming on this day before this court for hearing the court made the following order:-

This application has been filed seeking amendment of the plaint to include an alternative prayer which reads as follows:

> *"Directing the Second defendant their men, agents, servants etc., to deliver the vacant possession of the suit property to the plaintiff, after removing all the offending construction if any put up by the second defendant at their own costs and on their failure to do so permit the plaintiff to remove the offending construction and recover the costs from the second defendant. "*

2. The suit in C.S.No.237 of 2012 was originally filed seeking a relief of declaration

(a) declaring that the exparte decree dated 28.07.1999 in O.S.No.12057 of 1999 on the file of V Assistant Judge, City Civil Court, Chennai, and consequential sale deed executed in favour of the 1st defendant by the X Assistant Judge, City Civil Court, Chennai in E.P.No.2492 of 2001 and registered as document No.1690 of 2001 dated 30.04.2001 in the Office of the Sub Registrar, T.Nagar, Chennai – 600 017 is illegal and invalid and set aside the same;

(b) declaring that the sale deed dated 02.04.2007 executed by the first defendant in favour of the second defendant and registered as document No.831 of 2007 is illegal, void and invalid and set aside the same;

(c) declaring that the plaintiff is the absolute owner of the plaint schedule property holding that the Sale Deed executed by the original owner in favour of the plaintiff and registered as document No.1775 of 2001 dated 13.08.2001 is valid and binding on the defendants under law;

(d) for injunction restraining the defendants their men, agents or any one acting on their behalf from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the Schedule property or creating any encumbrance by way of Sale, Mortgage, Agreement, etc., in respect of any portion of the schedule property or in any other manner dealing with the suit property and

(e) for cost of the suit.

3. Along with the suit an application for injunction has been filed and it appears that this Court ordered status quo. On the defendants entering appearance and after contesting, the order of status quo was vacated by this Court. It is claimed that as against the said order vacating the order of status quo an appeal was filed by the plaintiff in OSA.No.388 of 2012, and an order of interim injunction was granted by the Hon'ble Division Bench. It is now claimed by the respondents/ defendants that the OSA has been dismissed on 15.09.2016.

4. However, Mr.K.Sellathurai, learned counsel appearing for the plaintiff would submit that the OSA is pending.

5. Be that as it may, now the plaintiff has come forward with this application seeking amendment of the plaint to include the alternative prayer for recovery of possession of the property.

6. In the affidavit filed in support of the amendment application, it is alleged that during the plaintiff's absence the 2nd defendant has trespassed into the suit

property and put up a compound wall. It is also claimed that the 2nd defendant had filed a written statement claiming that they are in possession of the property along with the adjacent vacant land. It is in these circumstances, during the course of examination of PW1, the plaintiff has come forward with this application.

7. Mr.Kuberan, learned counsel appearing for the respondents/ defendants would contend that the application for amendment, being post trial in the absence of any reasons, as to why the plaintiff could not have asked for the relief of possession by way of amendment earlier in point of time, this application is barred under proviso to Order VI Rule 17 of the Code of Civil Procedure, Amendment 2002.

8. It is also contended that the plaintiff who has chosen to ask for relief of injunction with the knowledge of the fact that the defendants are in possession of the property, cannot be now allowed to amend the prayer and seek the relief of possession which is barred by Order II Rule 2 of the Code of Civil Procedure.

9. Mr.K.Sellathurai, learned counsel appearing for the applicant would contend that the proposed amendment does

not alter the nature of the suit. The cause of action for seeking amendment, according to him, had arisen only during the pendency of the suit. Hence, he is entitled to the alternative relief of possession.

10. I have considered the rival contentions. The law relating to amendment of pleadings is to the effect that the Court should be liberal in allowing the prayer for amendment sought for with the object of preventing the multiplicity of the proceedings.

11. In the case on hand, both the parties are placing their claim only on title. Therefore, the question of possession being barred by limitation does not strictly arise. The amendment sought for is only to introduce consequential relief. If the plaintiff is found to be entitled to the reliefs of declaration sought for by him, he would be automatically entitled to consequential reliefs of either possession or injunction depending upon the findings of the Court on possession after trial.

12. Therefore, I do not think that the alternative prayer for possession introduces a new cause of action or alters the nature of the suit. The nature of the suit as one for declaration remains the same.

13. The other objection of Mr.Kuberan, learned counsel appearing for the respondent/ defendant is that the application has been filed post trial ie., after the commencement of trial. Under Proviso to Order VI Rule 17 of the Code of Civil Procedure, after the amendment of CPC, a plaintiff who seeks amendment of plaint after commencement of trial is not totally debarred from seeking such an amendment. All that the proviso requires is that the plaintiff should show that despite due diligence he could not have raised the matter before the commencement of trial. As could be seen from the facts set out earlier, the plaintiff was favoured with an order of status quo at the time of initiation of the suit which was subsequently vacated, but in the appeal the Hon'ble Division Bench had granted an order of injunction. Therefore, the plaintiff had protective order of status quo for some time which was vacated and then she was favoured with an order of injunction by the Hon'ble Division Bench. Hence, there was no occasion for the plaintiff to claim that she has been dispossessed or to seek an alternative relief of possession.

14. Even according to the learned counsel for the respondents/ defendants, the OSA came to be dismissed only

on 15.09.2016. Even during the pendency of OSA the plaintiff had come forward with an application in A.No.5205 of 2017 which was filed into Court on 23.06.2016 seeking the relief of mandatory injunction directing the defendants to put the plaintiff in possession. Pending the said application viz., A.No.5205 of 2017, the plaintiff filed the present application in A.No.7251 of 2017.

15. Hence, I do not see any negligence or lack of diligence on the part of the plaintiff in seeking the amendment. Therefore, I am of the considered view that the amendment sought for should be allowed.

16. Hence, this application stands allowed.

17. It is seen from the valuation of the Original plaint that the prayers C and D have been valued at Rs.1,50,00,000/- as market value of the entire property under Section 25(b) of the Tamil Naud Court Fees and Suits Valuation Act. But the Court fee has been calculated on one half of the market value and the plaintiff had paid a sum of Rs.78,525/- as Court fee. Therefore, the plaintiff is liable to pay the Court fee on the remaining half i.e., Rs.78,525/- The plaintiff shall pay the said Court fee within a period of four weeks from today.

18. In fine this Application is allowed subject to the plaintiff paying the Court fee of Rs.78,525/- within a period of four weeks from today, failing which the application stand dismissed.

19. The plaintiff shall pay the Court fee. On payment of Court fee the plaintiff would be allowed to carryout amendment and also file a amended copy of the plaint within two weeks thereafter.

Sd./-R.S.M.J

22/12/2017

//Certified to be true copy//

Dated at Madras this the day of 2018.

JJ 21/02/2018

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.