



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2018
(Reserved on 21.03.2018)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD) Nos.124 and 125 of 2018
and
CMP(MD) No.548 of 2018

Marudhur Ravi

... Revision Petitioner/Respondent/
Respondent/Defendant

vs.

SV.RM.RM.Sevugan Chettiar

... Respondent/Petitioner/
Petitioner/Plaintiff

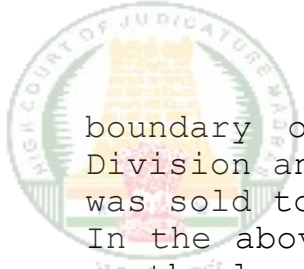
Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order in E.A.Nos.40 of 2014 and 20 of 2015 in E.P.No.40 of 2011 in O.S.No.75 of 2007 dated 17.10.2017 on the file of District Munsif Court, Madurai Taluk.

For Petitioner : Mr.S.A.Ajmalkhan
For Respondent : Mr.R.Subramanian

COMMON ORDER

These revision petitions have been filed against the fair and decreetal order in E.A.Nos.40 of 2014 and 20 of 2015 in E.P.No.40 of 2011 in O.S.No.75 of 2007 dated 17.10.2017 on the file of District Munsif Court, Madurai Taluk.

2.The respondent/plaintiff has filed a suit in O.S.No.75 of 2007 for declaration and mandatory injunction to remove the structure put up by the defendant and for recovery of possession of A1 schedule property. The case of the respondent is that he purchased the suit property by way of registered sale deed dated 09.05.1985 from one Maruthumamalai and had been in possession and enjoyment of the same by mutating revenue records. The Government issued patta pass book in the name of the respondent for the subject property. The respondent is a old man residing in Madurai Town away from the suit property which is situated at Narasingam Village. The respondent's vendor has plotted out the land situated on the eastern side of A1 schedule property and sold the same to various third parties. By way of registered sale deed dated 26.06.1982, one P.Balakrishnan has purchased Plot No.14 which is situated on the eastern side of A1 schedule property. In the said deed, the eastern

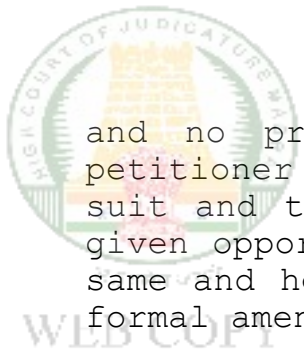


boundary of the plot is shown as 'west of Periyar Kalvoi 9th Division and Maruthumamalai Punjai. The said Maruthumamalai Punjai was sold to the respondent by registered sale deed dated 09.05.1985. In the above sale deed, eastern boundary has been clearly mentioned as the land plotted out and sold to various third parties.

3. According to the petitioner, in the plaint in O.S.No.75 of 2007, the respondent/plaintiff mentioned the name of the defendant as 'Maruthoor Ravi, son of P.Balakrishnan'. In the plaint, the plaintiff has mentioned the defendant as woman and the pleadings, prayer in the plaint are incorrect and unsustainable one. According to the petitioner, the respondent/plaintiff has obtained exparte decree on 23.01.2008. In the exparte judgment, none of the person in the defendant side appeared because no notice was served. In fact, the name and address of the defendant are not correct. The Trial Court simply passed the exparte decree in a cryptic nature. In the judgment, the Trial Court held that 'Today when the suit is taken up, the defendant called absent, set exparte. PW1 chief proof affidavit filed and examined. Ex.A1 to A6 marked. Perused. Claim proved. Hence the suit is decreed with cost as prayed for.' Based on the exparte decree, the respondent/plaintiff filed E.P.No.40 of 2011 against Maruthoor Ravi, son of P.Balakrishnan.

4. In the execution proceedings, one private summon was served to the revision petitioner's wife, in which, the petitioner's name was mentioned as 'Maruthoor Ravi son of P.Karuppanan'. In fact, the petitioner's name is 'Ravi son of Karuppanan'. Originally, execution petition was filed against Maruthoor Ravi, son of P.Balakrishnan. After receiving summon, the petitioner filed a detailed counter in EP stating that in the suit, he was not a party and no notice was served to him. In fact, in the suit proceedings, the petitioner was not impleaded. He did not have the knowledge about the suit proceedings. Thereafter, the respondent/plaintiff filed the present applications in E.A.Nos.40 of 2014 and 20 of 2015 to amend the father's name of the revision petitioner herein in EP as well as in the judgment and decree made in O.S.No.75/2007. According to the petitioner, such amendment at the execution stage is not maintainable. However, the Execution Court has simply allowed the said applications holding that the revision petitioner has not stated his father's name, against which, the petitioner has filed the present revision petitions.

5. Per contra, the respondent would submit that when the suit notice was sent to the petitioner, he deliberately evaded from service and in the EP stage, he has promptly appeared and contested the matter which would show that the petitioner is intended to drag on the matter and the respondent filed E.A.Nos.40 of 2014 and 20 of 2015 under Order 6 Rule 17 and Section 151 CPC and Sections 151 to 153 CPC respectively to amend the father's name of the revision petitioner in the execution petition as well as in the judgment and decree in the suit. The respondent has only sought to amend the father's name of the petitioner. The amendment is only a formal one



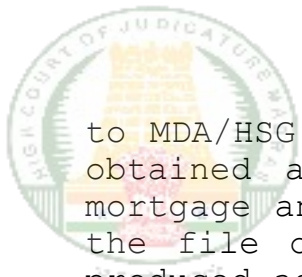
and no prejudice would be caused to the petitioner since the petitioner is aware of the proceedings right from the filing of the suit and the Court below has rightly held that the petitioner was given opportunity to contest the suit, but he failed to utilise the same and hence he cannot oppose the present applications to make a formal amendment.

6.The respondent relied on the judgment reported in AIR 2009 SC 2141, wherein it has been held that even the survey number of the suit can be amended after passing of final decree. He would also rely on the judgment reported in AIR 2009 SC 2136, wherein, it is held that bonafide mistake in the decree can be rectified by amending the decree and therefore, prayed for dismissal of the revision petitions.

7.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

8.Perusal of the record shows that the respondent/plaintiff filed a suit against Maruthoor Ravi, son of P.Balakrishnan. He issued notice to the address of "Maruthoor Ravi, son of P.Balakrishnan, Y.Narasingham Village, Yanaimalai Othakadai P.O. Madurai North Taluk, Madurai District" and the same was returned on 15.09.2006 as addressee's father name differed. The returned postal cover was marked as Ex.P6 in the exparte judgment which finds place in the additional typed set of papers. Thereafter, the respondent/plaintiff had taken steps for substituted service in O.S.No.75 of 2007. In the paper publication, different address has been mentioned namely, "Maruthoor Ravi, Lorry driver, Vaikkal oram, Authkal street, 2nd ward, Y.Narasingham, Madurai District", in which, the father's name of the revision petitioner has not been mentioned and the respondent has mentioned different address which is not mentioned in the plaint in O.S.No.75 of 2007.

9.Perusal of the record further shows that in the exparte judgment, the lower Court has held that A1 schedule property belongs to the plaintiff and consequently directed the defendant to hand over physical possession of suit A1 schedule property and also to remove the superstructure put up in the suit A1 schedule and to pay mesne profits for the illegal use and occupation of suit A1 schedule. But, in the description of the properties in the decree in O.S.No.75 of 2007, there is no such A1 schedule. There is no proper finding and proper evidence in the exparte judgment in O.S.No.75 of 2007. The judgment is very cryptic in nature. The revision petitioner's name is K.Ravi, son of Karuppanan. On 22.05.1997, he purchased the property from Kala, wife of late Pitchai for a valuable consideration through a registered sale deed in Document No.1334 of 1997 on the file of Thamaraipatti Sub Registrar Office, Madurai, to the extent of 4 cents 266 sq.ft. On 02.12.1999, the revision petitioner obtained a building plan approval from the Narasingam Panchayat and constructed a pucca building. He and his son have mortgaged the property on 15.12.1999



to MDA/HSG 90, Madurai North Taluk Co-operative Housing Society and obtained a loan and then on 05.06.2014, they have redeemed the mortgage and the same was registered in Document No.2782 of 2014 on the file of Sub Registrar, Othakadai. Those documents have been produced as items 8 and 11 in the additional typedset of papers.

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10.It appears that the petitioner is residing in the said property from the date of purchase and has been paying necessary taxes and E.B consumption charges, water taxes and receipts therefor are also produced in the typedset of papers. The proposed amendment as ordered by the learned Judge according to me is not a typographical error. Even as per the amended provision of the Act, at the stage of execution petition, amendment is not maintainable without amending the plaint, judgment and decree. The respondent has introduced a new case by way of amendment which cannot be sustained. The judgments relied on by the respondent are not applicable to the facts and circumstances of the case.

11.In my considered opinion, the learned Judge ought not to have allowed the applications to amend the father's name of the petitioner in EP petition as well in the judgment and decree of the suit. It is not so simple to say that a typographical error had occurred. All the above facts would clearly show that it is not an amendment as to an error. The entire cause of action has been changed and all the documents prove that the revision petitioner has been completely put on dark about the proceedings before the court and therefore, I am inclined to interfere with the impugned orders passed by the learned Judge.

12.Accordingly, the orders made in E.A.Nos.40 of 2014 and 20 of 2015 in E.P.No.40 of 2011 in O.S.No.75 of 2007 dated 17.10.2017 on the file of District Munsif Court, Madurai Taluk, are set aside and these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Madurai Taluk, Madurai.

+ 1 CC TO Mr.S.A.AJMALKHAN, ADVOCATE IN SR No. 61666
+ 1 CC TO Mr.R.SUBRAMANIAN, ADVOCATE IN SR No. 61825

BALA

TE/RSK/SAR-4 : 08/05/2018 : 4P/4C
<https://hcservices.ecourts.gov.in/hcservices/>

order made in
CRP (PD) (MD) Nos.124 and 125 of 2018
17.04.2018