



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2018

Delivered on : 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD)No.2578 of 2016

and

CMP(MD)No.12161 of 2016

1.Vedhamary

2.Peter

3.Arul Prakasam

.. Petitioners

Vs.

1.Murali

2.Sudhakar

.. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 15.09.2016 passed in I.A.No.848 of 2015 in O.S.No.49 of 2014 on the file of the Subordinate Court, Sivagangai.

For Petitioners

: Mr.S.Natarajan

For Respondents

: Mr.V.Meenakshi Sundaram

for Mr.E.R.Guru Balachandran

ORDER

The present Civil Revision Petition was filed challenging the order allowing the amendment petition filed by the respondents herein in I.A.No.848 of 2015 in O.S.No.49 of 2014 dated 15.09.2016 on the file of the learned Subordinate Court, Sivagangai.

2.The case of the revision petitioners' is that the respondents herein as plaintiffs filed the suit for Declaration and Recovery of possession and also for future Mesne profits against the revision petitioners herein in O.S.No.49 of 2014 before the learned Subordinate Court, Sivagangai.

3.In the said suit respondents herein made a post Trial amendment application after examination of witnesses PW1 to PW5 and marking 7 documents Ex. A1 to A7 for an amendment to include the relief of declaration, to declare a sale deed dated 14.05.2003 as null and void. Though the plaintiffs / respondents have pleaded as to a sale claimed to be invalid in paragraph 18 of the plaint, the corresponding relief to declare the deed dated 14.05.2003 as invalid was not made.

4.As the plaintiffs engaged a new counsel to conduct their case they received knowledge as to the above claim to invalid the sale deed dated 14.05.2003 would be appropriate. Therefore to avoid multiplicity of proceeding they filed the above amendment

application seeking to include the relief of declaration in respect of the above sale deed.

5. According to the revision petitioners the amendment cannot be allowed as the same is a post trial amendment application. Further the plaintiffs despite knowing very well about the existence of sale deed dated 14.05.2003 even prior to the filing of the above suit, failed to seek the relief of declaration at the time of filing the suit and now had filed the above application to delay the disposal of the suit.

6. It is the contention of the learned counsel of the revision petitioners that during the cross examination of PW1 by the defendants, he has categorically admitted and as well averred in the plaint that he know about the sale deed executed in favor of one Thanislal even prior to the filing of the suit. The same would reveal that the present amendment application is only to drag on the proceedings. The plaintiffs' knowing fully well about the execution of sale deed in favor of Thanislal, filed the amendment application after commencement of trial and the same is impermissible.

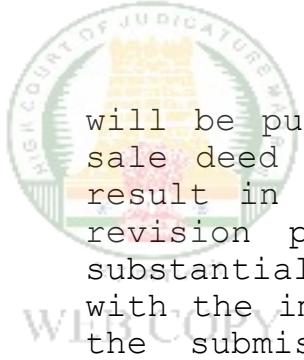
7. The learned counsel for the revision petitioners made reliance upon the following decisions reported in 2012 (2) SCC 300, 2012 (5) CTC 37 and 2012 (11) SCC 341 to substantiate his argument that despite due diligence the respondents herein failed to claim for the above relief and the same cannot be allowed at belated stage.

8. Per contra, learned counsel appearing for the respondents herein would submit that the pleading on record in respect of the sale deed is sufficient to seek the amendment and as well would be appropriate in the facts and circumstances. Therefore by allowing the amendment application, no prejudice would be caused to the revision petitioners and the proposed amendment will not change the character of the suit and in fact the amendment would avoid multiplicity of proceedings. The learned counsel for the respondents accordingly contended that the Learned Trial Judge was right in allowing the amendment application and the same do not require any interference.

9. I Heard Mr.S.Natarajan, learned counsel for the petitioners and Mr.V.Meenakshi Sundaram for Mr.E.R.Guru Balachandran, learned counsel for the respondents and perused the entire material available on records.

10. On perusal of records it is disclosed that the respondents claim for an amendment of relief to declare a sale deed as null and void. According to the plaint averment para 18, the above sale deed is executed without authority and title by the vendor in respect of the suit property. Admittedly the plaintiff seeks for declaration of their title over the suit property disputing the above sale deed, however though a relief of declaration of title was sought, the plaint lack the prayer to set aside the said sale deed.

11. On appraisal of the above factual background, this Court find that even if the plaintiffs succeeds in the present suit, he



will be put in a condition to file a separate suit to nullify the sale deed registered on the file of Sub Registrar. The same would result in multiplicity of proceedings which would also bother the revision petitioners. Therefore in view to render complete and substantial justice, this Court do not find any reason to interfere with the impugned Order. However, at the same time this Court finds the submission made by the Learned Counsel for the revision petitioners that the amendment is belatedly made after commencement of trial and the respondents out of due diligence had not sought or appropriate relief at the institution of suit. But this Court is of the firm view that to render substantial justice, a post trial amendment can be allowed on terms.

12. In the result:

(a) The Civil Revision Petition fails and the same is dismissed;

(b) However there shall be an order as to cost towards the said amendment application at Rs.5,000/- each to defendants in the suit payable by the plaintiffs/respondents;

(c) The said amount shall be paid within a period of two weeks from the date of receipt of a copy of this order by the respondents herein to the revision petitioners. Consequently, the amendment shall be carried out by the Trial Court and the revision petitioners is at liberty to file reply within a period of two weeks in respect to the amendment carried out. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Subordinate Court, Sivagangai.

2. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

+1CC to Mr.S.Natarajan, Advocate, SR.No.89781

C.R.P. (MD) (PD) No.2578 of 2016 and
CMP (MD) No.12161 of 2016
09.10.2018

VSV

ES/SKN/RSK/SAR 2/09.11.2018/3P/5C

<https://hcservices.ecourts.gov.in/hcservices/>