

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 23.09.2019

ORDER PRONOUNCED ON : 14.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD) No.3476 of 2014 and
M.P.No.1 of 2014

M.Poornachandran

Petitioner

Vs

Pazhaverkadu Venkatasami Gramani Trust
Rep by its Trustee
S.Venkataraman
Old No.42, New No.128
Kamarajar Salai
Raja Annamalaipuram
Chennai -28

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 15.07.2014 passed in I.A.No.776 of 2014 in O.S.No.90 of 2002, on the file of District Munsif Court, Tiruvallur.

For Petitioner : Mr.P.Mahadevan and Mr.P.VeeraRaghavan

For Respondent : Mr.M.S.Subramanian

ORDER

The second plaintiff in OS No.90 of 2002 is the petitioner herein. Before the trial Court, the petitioner and one deceased Krishnaveni ammal as plaintiffs have filed the suit as against the respondent and

seeks the relief to direct the defendants/respondents to perform the contract executed in favour of the 1st plaintiff and to direct him to execute a fresh lease deed in favour of the 2nd plaintiff, for a period of 36 years from 01.04.2002, on some terms and conditions. In the event of his failure to do so, this Court may be pleased to execute the lease deed in favour of the 2nd plaintiffs at his own cost.

2. When the suit is pending for trial proceedings on 07.03.2013, the petitioner herein has filed an application under Order 6 Rule 17 of Civil Procedure Code and prayed to permit him to amend the plaint, in respect to the lease period and the date of lease deed. The learned District Munsif, after affording opportunity to the respondents in this Civil Revision petition, has come to the conclusion that if the application filed by the petitioner is allowed, the character of the suit will be changed. Ultimately, by holding as above, the learned judge had dismissed the application filed by the petitioner.

3. Aggrieved over the said findings, the petitioner/plaintiff is before this Court with this present Civil Revision Petition.

4. Today when the Civil Revision petition is came up for hearing, the learned counsel appearing for the petitioner present and would contend that at the time of filing the suit inadvertently the petitioner/plaintiff has mentioned the date of commencement of lease period as 01.04.1962. But as per the lease deed, the date of

commencement of the lease is from 01.04.1966 and not from 01.04.1962. Therefore only for rectifying the mistake committed by the petitioner, this application has been filed before the trial Court. But the trial Court, without considering the said aspect in a perspective manner wrongly concluded that if the petition is allowed, the character of the suit will also be changed. So, the said findings arrived at by the trial Court is not correct.

5. On the other hand, the learned counsel appearing for the respondent would contend that the petitioner has filed this application belatedly i.e after 12 years from the date of institution of the suit. For the said delay, he has not stated any valid reasons and thereby the order passed by the trial court is perfectly correct. According to him, interference by this Court in the order passed by the District Munsif on 15.07.2014, is not necessary.

6. Submissions made by either side counsel are considered.

7. According to the case of the plaintiff, as per the contract made between the petitioner and the respondent, the respondent has to perform the contract by executing a sale deed. Further, the defendants to perform the contract by executing the lease deed on renewal and that the 1st plaintiff has executed a deed of sub-lease dated 29.08.2000. Under the lease deed dated 17.06.1962, the lease for a period of 36 years and that the lessee under Clause -4 of the lease deed could renew the lease for

further period of 36 years on giving three months notice prior to the expiry of the period of lease covered by lease deed dated 17.06.1962. It is further case of the plaintiff that as per the clause found in the lease deed , the lease period commences only from 1966 and not from 1962.

8. In the said circumstances, to show the bonafide of the petitioner, he has produced the registered Lease Deed dated 17.06.1962 as document No.1 and Sub-lease Deed dated 29.08.2000 as document No.2 in the additional type set filed by him.

9. Now on going through the lease deed dated 17.06.1962, in clause no.1, it was specifically mentioned as follows:-

“The lease shall be for a period of 36 years commencing from 1st April 1966 and ending with 30th March 2002.”

Therefore, only according to the recital found in the registered sale deed dated 17.06.1992, the petitioner has filed this application to amend the plaint, in respect to the date of commencement of lease and about the date of lease deed. The reason stated by the petitioner is having reasonable one. In respect to the date mentioned by the petitioner, the respondent has not raised any objection in the counter affidavit filed before the trial Court. More than that, in the counter affidavit filed by the

respondent, he has not disputed the averment mentioned in the lease deed. Therefore, I am of the opinion that at the time of filing the plaint, the plaintiff has inadvertently committed some mistakes and filed the suit. Even though this application has been filed belatedly, that alone need not be the reason for dismissing the petition. If the relief sought for by the petitioner is refused, then only the character of the Suit will be changed. So, I am of the opinion that interference is necessary in the order dated 15.07.2014 passed by the District Munsif, Tiruvallur in I.A.No.776 of 2014 in O.S.No.90 of 2002.

10. In view of the above discussions, the Civil Revision Petition is allowed. No costs. The learned District Munsif is directed to give permission to the petitioner/plaintiff to amend the plaint in OS No.90 of 2002. Consequently, connected Miscellaneous Petition is closed.

vrn

14.10.2019

To

The District Munsif Court, Tiruvallur.

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R.PONGIAPPAN, J.,

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Pre-delivery order in
Civil Revision Petition (PD) No.3476 of 2014 and
M.P.No.1 of 2014

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