



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.11.2019

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P. (PD) (MD)No.884 of 2013

and

M.P. (MD)No.1 of 2013

WEB COPY

Mohamed Marjohn Beevi

.. Petitioner

Vs.

1.Muthu Amina (Died)

2.Hyrun Nisha

3.Barakath Nisha

4.Gajini Mohamed

.. Respondents

(R2 to R4 are brought on record as legal heirs of the deceased sole respondent vide Court order dated 13.07.2018 made in M.P. (MD)No.2 of 2013 in C.R.P. (MD)No.884 of 2013)

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India to call for the records and set aside the order dated 05.03.2013 in the application in I.A.No.929 of 2012 in O.S.No.186 of 2005 by the learned District Munsif, Ramanathapuram and allow the same.

For Petitioner : Mr.J.Barathan

For Respondents : No Appearance

ORDER

The defendant in the suit in O.S.No.186 of 2006 on the file of the learned District Munsif, Ramanathapuram, is the revision petitioner before this Court. The revision petition has been filed challenging the order passed by the learned District Munsif, Ramanathapuram in allowing the application for amendment filed by the respondent/plaintiff.

2.The facts in brief, which are necessary to dispose of the case is as follows:

(i)The respondent herein had filed a suit in O.S.No.186 of 2005 on the file of the learned District Munsif, Ramanathapuram for a bare injunction restraining the revision petitioner/defendant from interfering with his possession and enjoyment of the suit property. The plaintiff based his case on the fact that the first respondent/plaintiff had executed a sale deed as customary for a mortgage loan on 08.06.2001 and the terms of the sale was that the property would be re-conveyed to the plaintiff on the discharge of the loan. The respondent would contend that she had already paid a sum of Rs.4,00,000/- (Rupees Four Lakhs only) till the date of filing of the suit and the revision petitioner is refusing to re-convey the property to her. That apart, the revision petitioner had threatened her that she would throw out the respondent from the suit schedule property and therefore, left with no other alternative, the



respondent/plaintiff had filed the instant suit.

(ii)The defence to the above suit was that the sale in question was simpliciter a sale and that it was only on account of the fact that the revision petitioner asked the respondent/plaintiff to vacate the premises and hand over the vacant possession that the suit has come to be filed.

(iii)The said suit was dismissed for default on 02.08.2007 was restored to file on 29.09.2008. The suit was posted for trial on 20.10.2008 and the matter was adjourned at the request of the petitioner for over 32 hearings and ultimately, it was only on 03.09.2012, that the respondent had opened the trial by examining herself as P.W.1. Thereafter, once again, the matter was being adjourned and on 24.09.2012, P.W.1 was cross examined and the matter was further posted for cross on 03.10.2012. It was only on 27.11.2012, the respondent had come forward with the impugned petition.

3.In the affidavit filed in support of the said petition, the respondent would submit that it was only when the case was studied on 26.11.2012, that her High Court Advocate had advised her she has to amend the plaint to include the declaratory prayer and that the sale deed dated 07.06.2001 is sham and nominal one since the alleged sale deed dated 07.06.2001 is a fraudulent sale deed.

4.The revision petitioner *inter alia* contended that the reasons for seeking the amendment of the suit prayer would indicate that the amendment was a post trial amendment and that apart, the relief was barred by limitation.

5.The learned District Munsif, however proceed to allow the said petition by holding that the nature of the suit would not be changed, since the validity of the sale deed was already narrated in the plaint. The learned Judge has also brushed aside the submission of the revision petitioner that the written statement had been filed as early as in January 2016 and the amendment ought to have been done within a period of three months. The learned Judge also held that the question of limitation can be raised by filing of additional written statement. Challenging the said order, the revision petitioners are before this Court.

6.Heard the counsel appearing for the petitioner. The respondent have not entered appearance through counsel. Though notice have been issued to them, since the earlier counsel represented to the Court that the bundle and change of vakalath had been handed over to the respondents.

7.The perusal of 'B' Diary entries as well as the dates and events that has been furnished by the petitioner in C.R.P(MD)No.217 of 2013 would clearly indicate that only attempt on the part of the



respondent/plaintiff was to protract the proceedings. The suit filed by the revision petitioner for declaration that he purchased the property from the respondent herein and for recovery of possession has been decreed and delivery has also been effected in the execution proceedings. The defendant, even in his written statement had categorically rejected the contention of the plaintiff/respondent that the deed executed by the respondent was only as a security for the loan. In the written statement filed on 06.04.2006, the revision petitioner had taken out a categorical stand that the sale was a valid sale and the intention was only to sell and that request of the revision petitioner that the respondent should hand over the possession of the property was baseless. The amendment petition has been filed after the evidence has been commenced and P.W.1 has been cross examined in part. The Proviso to Order VI Rule 17 of CPC has placed a fetter on amendments after the trial has commenced. However, the Court has its discretion to permit the amendment, provided that the matter to be introduced by way of amendment is not within the knowledge of the petitioner seeking the amendment despite due diligence being exercised. In the instant case, this contingency does not arise since even as early as in April 2006, the defendant/revision petitioner has filed a written statement categorically stating that the deed which was entered between them was a sale deed. Further by way of the application the plaintiffs wanted to declare the deed as forgery. The limitation period is three years from the date on which the plaintiff came to know about the defendant claiming independent title to the suit property. Admittedly, the respondent was put on notice about the stand of the defendant, in the month of April 2006 and no steps have been taken to amend the petition within three years.

8. The learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers v. Narayanaswamy and sons and others** reported in **(2009) 10 Supreme Court Cases 84**. The Hon'ble Apex Court has laid down some basic principles, which has to be taken into consideration while allowing or rejecting the application for amendment. One such principle is that the Court should decline the amendment if a fresh suit on the amendment claim would be barred by limitation on the date of application. Once again, the hands of the Court are not tied down by this principle, if the amendment is required in the interest of justice. In fact the learned Judge has observed as follows:

"The rule, however, is not a universal one and under certain circumstances, such an amendment may be allowed by the Court notwithstanding the law of limitation. The fact that the claim is barred by the law of limitation is but one of the factors to be taken into account by the Court in exercising the discretion as to whether the amendment should be allowed or refused, but it does not affect the power of the Court if the amendment is required in the



interests of justice (see Ganga Bai v. Vijay Kumar and Arundhati Mishra v. Ram Charitra Pandey)."

9. In the case on hand, the conduct of the respondents throughout the proceedings as well in the connected suit in O.S.No.25 of 2008 would clearly indicate that the only attempt on the part of the respondents was to protract the proceedings. Further considering the fact that the revision petitioner have obtained the decree in suit in O.S.No.25 of 2008, which was for declaration and permanent injunction, the order passed by the learned Judge allowing the amendment is to say the least perverse.

10. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.929 of 2012 in O.S.No.186 of 2005 dated 05.03.2013 on the file of the learned District Munsif, Ramanathapuram is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

Mrn

To

1. The District Munsif, Ramanathapuram.

+1CC TO MR.T.R.JEYAPALAM, Advocate, Sr.No.100625

C.R.P. (PD) (MD) No.884 of 2013

22.11.2019

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