

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (PD) No.2872 of 2011 and
M.P.No.1 of 2011

D.Perumal

..Petitioner

Vs

N.Babu

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the order and decretal order in I.A.801/2010 in O.S.No.280/2006 on the file of Additional District Munsif Court, Kanchipuram, dated 08.12.2010.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.J.Kamaraj

ORDER

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This Civil Revision Petition has been filed against the order dated 08.12.2010 in I.A.No.801/2010 in O.S.No.280/2006 on the file of Additional District Munsif Court, Kanchipuram.

2. The petitioner filed a suit in O.S.No.280 of 2006, on the file of District Munsif, Kancheepuram against the respondent for bare injunction. The respondent filed a written statement denying the fact that the suit property is a joint family property. Since the question of title has to be decided in the above suit, the petitioner filed I.A.No.801 of 2010 under Order 6 Rule 17 to amend the prayer of the Plaint from permanent injunction to declaration of title to the suit property as a joint family property and for a consequential permanent injunction, in which the respondent also filed a counter affidavit by stating that the plaintiff cannot take two different contradictory stand in the affidavit and plaint and prayed for dismissal of the application.

3. On considering the submissions made on either side, the Trial court dismissed the I.A.No.801/2010 in O.S.No.280/2006 on 08.12.2010 by stating that already the property was declared as a joint family property in a suit filed by the daughter-in-law of the plaintiff in O.S.No.950/1989 and therefore it is not necessary to declare once again the suit property as a joint family property. Challenging the same, the present Civil Revision Petition has been filed.

4. The learned counsel for the petitioner would submit that though he has admitted in the suit in O.S.No.950/1989 that the suit property is a joint family property, admission is different from declaration made by the Court. He would further submit that in paragraph 5 of the plaint, it is clear that the properties are joint family properties of the Plaintiff. As the respondent filed the written statement denying the said fact, he was constrained to file application for amendment of plaint. The Trial Court without considering the same has wrongly given a finding that already the suit property is declared as a joint family property and dismissed the petition. Hence, he prays to set aside the order passed by the trial Court.

5. The learned counsel for the respondent would submit that the suit itself is barred by limitation for the reason that the petitioner has taken two different contradictory stand which is not permissible. He would further submit that on considering the said fact the trial court has rightly dismissed the application filed for amendment of plaint and therefore no interference is called for.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Admittedly the petitioner filed a suit in O.S.No.280 of 2006 on the file of District Munsif, Kancheepuram against the respondent for permanent injunction and after filing the written statement by the respondent the petitioner has come forward with an application to amend the plaint. According to the petitioner, since the respondent denied the status of the property he wanted to amend the prayer.

8. A careful reading of the Plaint filed by the petitioner and the written statement filed by the respondent and also the order passed by the trial court shows that admittedly the petitioner filed a suit in O.S.No.950 in 1989 wherein there is an averment that the suit property is a joint family property. However, the petitioner filed another suit in O.S.No.280 of 2006 for bare injunction. Since the respondent denied title and also status of the property, the petitioner has come forward with a petition to amend the plaint. In the suit in O.S.No.950/1989, the court did not declare the suit property as a joint family property as stated above. The learned counsel for the petitioner submitted that once the petitioner filed a suit for bare injunction title is denied by the respondent and therefore the petitioner seeks to amend the prayer. But the trial Court failed to consider the said fact and wrongly dismissed the I.A.No.801/2010 by stating wrong reason.

9. In such view of the matter, this Court is of the view that if the amendment is allowed, no prejudice would be caused to the respondent.

10. Hence, the liberty is given to the respondent to raise his plea before the trial Court and the trial Court can frame necessary issues after amending the plaint. After the plaint is amended, the respondent can file additional written statement and after filing of the additional written statement, the trial Court is directed to dispose of the suit in O.S.No.280 of 2006 which is pending from 2006 , within a period of one year.

11. In the result, this revision petition is allowed. The order passed in I.A.No.801/2010 on the file of Additional District Munsif Court, Kanchipuram is set aside. No costs. Consequently, connected M.P. is closed.

24.07.2020

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To

1. The District Munsif cum Judicial Magistrate Court, Nannilam,

2.The Section Officer, V.R. Section, High Court, Madras

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P.VELMURUGAN,J.

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