

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.11.2020
DELIVERED ON : 04.12.2020

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD)No. 2045 of 2015
and
M.P.No.1 of 2015

1.Shanatha
2.Rajabathar
3.Sanjeevi
4.Perumal
5.K.Srinivasan
6.Saraswathy
7.Yasodha
8.R.Srinivasan
9. Usha
Kuppammal (died)
10.Duraisamy
11.Jayalakshmi
12. Thilagam
13.Murugesan
14.Manonmani

...Petitioners/Defendants

Vs.

Sriramulu Reddiar

...Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal order passed in I.A.No.1125 of 2012 in O.S.No.93 of 2006 dated 01.09.2014 by the District Munsif Court Chengalpattu.

For Petitioners : Mr.S. Balasubramanian
For Respondent : Mr.V.Lakshmi Narayanan

ORDER

This Civil Revision Petition has been filed by the respondents/defendants against the order passed in I.A.No.1125 of 2012 in O.S.No.93 of 2006 on the file of the District Munsif, Chengalpattu, dated 01.09.2014.

2. The respondent herein had filed a suit in O.S.No.93 of 2006 on the file of the District Munsif, Chengalpattu, to declare his title over the suit property and for consequential relief of permanent injunction restraining the defendants 14 and 15 therein from interfering with his peaceful possession and enjoyment of the suit property. The defendants entered into appearance through their advocate and filed written statement denying the claim of the respondent / plaintiff. The trial court, after framing necessary issues, posted the suit for trial. During trial, the respondent herein examined himself as PW1. He was partly cross examined and when the matter was posted for continuation of cross-examination, the respondent/plaintiff had filed an application in I.A.No.1125 of 2012 under Order 6 Rule 17 r/w 151 of CPC seeking permission of the court to amend the plaint as follows:-

" Details of amendment

(1) In the body of plaint Add para 5(b) The Plaintiff submit that the Sale Deed dt 28.11.2005 executed by Defendants 1 to 13 in favour of 14th Defendant Registered as Document No.7952/2005 on the file of S.R.O.Thirupporur and the Sale Deed dt 23.12.2005 executed by 14th Defendant in favour of 15th Defendant Registered as document No.8512/2005 on the file of S.R.O.Thirupporur are invalid and hence to be declared as Null and Void.

(2) In para 7 Add: - The Plaintiff value the suit for the relief 2 and 3 at 1000/- each and pay Court fee for Rs.75.50/- each U/S.25 (d) of Court Fee Act.

(3) Add (2) declare the Sale Deed dt 28.11.2005 executed by defendants 1 to 13 in favour of 14th defendant registered as Document No.7952/2005. On the file of S.R.O.Thirupporur as Null and Void (3) declare the Sale Deed dt 23.12.2005 executed by 14th defendant in favour of 15th defendant registered as document No.8512/2005 on the file of S.R.O.Thirupporur as Null and Void.

(4) read prayed 2 and 3 as prayed 4 and 5

(5) In the memo of valuation column

Add: value of the suit for the relief 2 & 3

Rs.1000/- each

Court fee payable and paid U/S. 2 (d) of CF Act

Rs.75.50 each

Total value of the suit

Rs.3000/-

Total value of the suit

Rs.226.50

(6) Other consequential amendments."

3. The petitioners herein opposed the said application by filing counter. However, the learned District Munsif had allowed the said application. Feeling aggrieved, the respondents/defendants have filed the present Civil Revision Petition.

4. Heard Mr.S.Balasubramanian, the learned counsel for the petitioners and Mr.V.Lakshmi Narayanan, learned counsel for the respondent.

5. The learned counsel for the petitioners has submitted that as per the proviso to Order 6 Rule 17 of CPC, no application for amendment of the pleadings shall be allowed after trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. He further submitted that in this case, the averments made in the plaint would show that the respondent/plaintiff got knowledge about the sale deeds dated 28.11.2005 and 23.12.2005 even at the time of filing of the suit, but he did not ask the relief to declare the said sale deeds are null or void. He further submitted that during cross-examination of PW1, the defendants have marked registration copies of the said documents as Exs.B1 & B2 respectively and thereafter, the case was adjourned for continuation of cross-examination and at that stage only, the respondent/plaintiff had filed an application seeking amendment of the plaint to incorporate the prayer for declaration of the aforesaid sale deeds as null and void and hence the said prayer is barred by the proviso to Order 6 Rule 17 of CPC. He further submitted that the relief for declaration is also barred by limitation and without considering the aforesaid facts, the trial court had allowed the application which was filed by the respondent herein seeking amendment of the plaint and therefore, he prayed to allow this CRP and set aside the order passed by the learned District Munsif in I.A.No.1125 of 2012.

6. In support of the aforesaid contention, the learned counsel for the petitioners/defendants has relied upon the decision in Bhagavatula Gopalakrishnamurthi and others Vs. Dhulipalla Sreedhara Rao and another, AIR (37) 1950 Madras 32.

7. Per contra, the learned counsel for the respondent/plaintiff has submitted that since the respondent/plaintiff is not a party to the said sale deeds, ignoring the said sale deeds, he filed a suit seeking declaration of his title over the suit property. He further submitted that since there was a cloud over the title of the immovable property, the respondent/plaintiff had filed a suit to declare his title over the said property. Merely because the persons who are not having any right or title over a property

created any document, the real owner need not resort to the court for each and every time seeking declaration that the said document will not bind upon him and hence he filed a suit for declaring his title. However, subsequently he felt that since the petitioners/defendants claiming right through the said documents, a formal declaration in respect of the said documents is necessary and hence, he filed a petition seeking permission of the court to amend the plaint. He further submitted that since the respondent/plaintiff has not raised any new plea through the amendment, the bar under the proviso to Order 6 Rule 17 of CPC will not apply to this case. He further submitted that the question of limitation is a mixed question of law and fact and the same can be decided only after taking evidence. He further submitted that taking into consideration the aforesaid facts, the learned District Munsif had allowed the said application and in the said order, this court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

8. As rightly pointed out by the learned counsel for the respondent/plaintiff, where the title is under a cloud in respect of any immovable property, the real owner has to file a suit to declare his title over the said property. He need not file a suit to declare the documents which were created by others as they will not bind upon him. In this case, in the plaint, the respondent has categorically pleaded that in order to grab the suit property, the 14th defendant brought up the sale deed with the connivance of the defendants 1 to 13. He also pleaded that the 14th defendant in order to create further encumbrance executed a sham sale deed dated 23.12.2005 in favour of the 15th defendant and hence the said sale deed is also invalid and will not bind upon him. Therefore, it is clear that through the proposed amendment, the respondent/plaintiff has not set up any new case. He has already pleaded his case in clear terms in the original plaint itself.

9. In *Bhagavatula Gopalakrishnamurthi and others Vs. Dhulipalla Sreedhara Rao and another*, (cited supra), this court held as follows:-

".....But on examining those decisions I find that if by reason of the subsequent events certain rights accrued to the plaintiff, the plaintiff would be entitled to claim reliefs under those rights. But in this case certain facts are alleged which facts were available to the plaintiffs and which the plaintiffs have not chosen to mention in the original plaint and I do not think it would be open to courts to permit such an amendment as it would, in the words of their Lordships of the Privy Council in the case reported in *Ma Shwe Mya v.*

Maung (1921) L.R. 48 I.A. 214 : I.L.R. 48 Cal. 832 (P.C.), permit a new case to be made on facts which were available but were not pleaded. I think that the result of allowing the amendment would be to introduce a new element which was absent in the original plaint and that the plaintiffs are not entitled to any such amendment.”.

10. In this case as already pointed out that the plaintiff had pleaded everything but omitted to ask prayer alone. Hence, the aforesaid decision will not apply to the facts of this case.

11. At this juncture, it would be relevant to refer to the decision in Mohinder Kumar Mehra Vs. RoopRani Mehra and others (2018) 2 SCC 132 wherein in the Hon'ble Supreme Court in paragraph No.22 has held as follows:

“22. The Proviso to Order VI Rule 17 prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case where actually before parties could led evidence, the amendment application has been filed and from the order dated 14.02.2014, it is clear that the plaintiff's case is that parties has led evidence even on the amended pleadings and plaintiff's cases was that in view of the fact that the parties led evidence on amended pleadings, the allowing the amendment was mere formality. The defendant in no manner can be said to be prejudiced by the amendments since plaintiff led his evidence on amended pleadings also as claimed by him.”

12. In this case also everything pleaded in the original plaint itself. Only prayer is sought to be added. Further, evidence also already adduced by the plaintiff with regard to the said sale deeds. Further, admittedly, the petitioners herein themselves had marked the said sale deeds as Exs.B1 and B2 through PW1 during cross examination. Under the said circumstances, the allowing of the amendment was a mere formality. The petitioners/defendants in no manner can be said to be prejudiced by the said amendment since the plaintiff led his evidence with regard to the said documents also.

13. In so far as limitation is concerned, the same is a mixed question of fact and law and the same can be decided only after taking evidence. Therefore, this court does not find any merit in this Civil Revision Petition. Accordingly, this Civil Revision Petition is liable to be dismissed.

14. In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

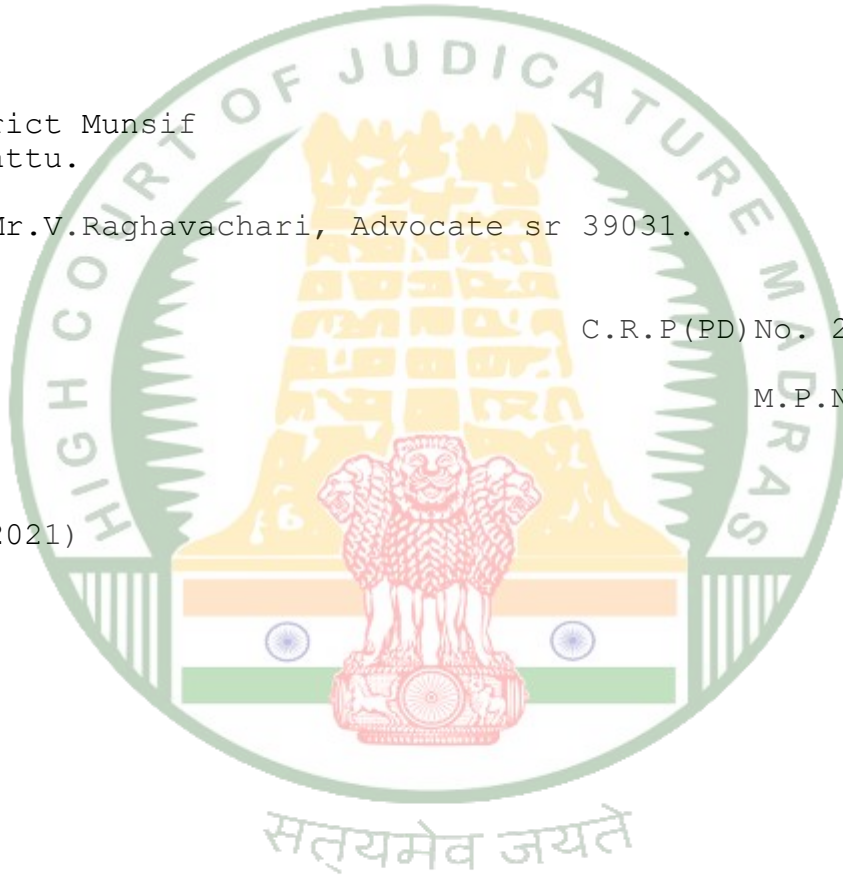
gv
To

The District Munsif
Chengalpattu.

+1 CC to Mr.V.Raghavachari, Advocate sr 39031.

C.R.P(PD)No. 2045 of 2015
and
M.P.No.1 of 2015

VSNI (CO)
SP(09/03/2021)



WEB COPY