

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.11.2020

Pronounced on : 09.12.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRP.No.3496 of 2015

and

M.P.No.1 of 2015

Komathi Sundar ... Petitioner/plaintiff

Vs.

1.S.K. Krishnaraj

2.S.G.Lakshmi Devi ... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 31.03.2015 made in I.A.No.1134 of 2014 in O.S.No.118 of 2013 on the file of the learned District Munsif Court, Sathyamangalam.

WEB COPY

For Petitioner : Mr.N.Manokaran

For Respondents : Ms.Aishwarya S. Nathan
for Mr.Srinath Sridevan

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of her application in I.A.No.1134 of 2014 in O.S.No.118 of 2013 on the file of the District Munsif, Sathyamangalam, dated 31.03.2015.

2. The petitioner herein had filed an application in I.A.No.1134 of 2014 under Order 6 Rule 17 Section 151 of CPC seeking permission of the court to amend the plaint to incorporate the relief of declaration. The learned District Munsif by the order dated 31.03.2015 had dismissed the said application. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3. Heard Mr.N.Manokaran, learned counsel for the petitioner and Ms.Aishwarya S.Nathan for Mr.Srinath Sridevan, learned counsel for the respondents.

4. The learned counsel for the petitioner has submitted that the petitioner herein had filed a suit in O.S.No.118 of 2013 on the file of the District Munsif, Sathyamangalam, for the relief of permanent injunction restraining the respondents herein from interfering with her peaceful possession and enjoyment of the suit property. He further submitted that the petitioner/plaintiff has filed the suit claiming absolute right over the suit property including the compound wall based on the registered partition deed dated 02.09.2004. He further submitted that the properties of the respondents also have been allotted only through the said partition deed. In the written statement, they have taken a stand that the suit property is a natham land, in which, the petitioner cannot claim any absolute right. He further submitted that since the first respondent is a party to the said partition deed, the respondents cannot go behind the said document. He further submitted that the respondents also claimed that they are co-owners of the said compound wall as the said partition deed is not valid on the ground that other legal heirs of late S.K.Kempaiah were not joined in the said document. He further submitted that if other legal heirs of late S.K.Kempaiah were not joined as parties, it is for the said legal heirs to challenge the said partition deed. Since the first

respondent is a party to the said document, he cannot contend that the said document is invalid on the ground that other legal heirs of S.K.Kempaiah were not added as parties.

5. The learned counsel for the petitioner has further submitted that since a registered partition deed was executed on 02.09.2004 and subsequently, mutation of revenue records also took place, the petitioner bonafidely believed that mere asking relief of injunction itself is sufficient, but, subsequently she felt that the relief of declaration also has to be asked for safer side and hence, she filed an application in I.A.No.1134 of 2014 seeking permission of the court to amend the plaint to incorporate the relief of declaration with regard to the northern side of the compound wall in the suit property. He further submitted that the learned District Munsif had dismissed the said application on the ground that already trial has commenced and PW1 was examined-in-chief and hence, the proposed amendment cannot be allowed in view of proviso to Order 6 Rule 17 of CPC. He further submitted that already the petitioner has made necessary pleadings in her plaint and also adduced evidence in her chief-examination as the said compound wall absolutely belongs to

her as per the registered partition deed dated 02.09.2004. In the proposed amendment, the petitioner has asked the court to permit her to amend the prayer in the plaint and if the said amendment is allowed, that would not cause any prejudice to the respondents and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned District Munsif in I.A.No.1134 of 2014 and allow the said application.

6. In support of the aforesaid contention, the learned counsel for the petitioner has relied upon the decision in ***Mohinder Kumar Mehra Vs. Roop Rani Mehra and Others, (2018) 2 SCC 132.***

7. Per contra, the learned counsel for the respondents has submitted that the petitioner had categorically admitted in her plaint that when she attempted to raise the height of the compound wall, the respondents herein objected to the same and also lodged a complaint before the police claiming that they are also having right in the said compound wall. She further submitted that the petitioner also admitted in the plaint that the respondents herein had sent a lawyer's notice dated

27.05.2013 alleging that the compound wall is a common property and inspite of the said fact, the petitioner had filed the suit for bare injunction alone without seeking declaratory relief. She further submitted that the learned District Munsif had returned the said plaint as to how the suit for bare injunction is maintainable without seeking declaratory relief and even thereafter, without amending the plaint had simply re-presented the same and requested the court to number the suit and accordingly, the said suit was numbered and summons were sent to the respondents.

8. She further submitted that after receipt of summons, the respondents entered appearance through an advocate and filed written statement denying the plaint averments that the petitioner is an absolute owner of the said compound wall and they categorically stated that the said compound wall is a common one and even thereafter, the petitioner did not take steps immediately to amend the plaint, but he entered into trial and filed a proof affidavit as PW1 and when the case was posted for cross-examination, she filed an application in I.A.No.1134 of 2014 seeking permission of the court to amend the plaint to incorporate declaratory relief. She further submitted that as per the proviso to Order 6

Rule 17 of CPC, the said application is not maintainable after commencing trial and taking into consideration the said facts, the learned District Munsif had rightly dismissed the said application and in the said order, this court need not interfere and therefore, she prayed to dismiss this petition.

9. The learned counsel for the respondents in support of her contention, relied upon the decision in ***Bhagavatula Gopalakrishnamurthi and Others Vs. Dhulipalla Sreedhara Rao and another, A.I.R. (37) 1950 MAD 32.***

10. A perusal of the typed set of papers filed by the petitioner shows that she filed a suit in O.S.No.118 of 2013 on the file of the District Munsif, Sathyamangalam, for the relief of permanent injunction to restrain the respondents herein from interfering with her peaceful possession and enjoyment of the suit property. In the said plaint, she has pleaded that the suit property was allotted to her under a registered partition deed dated 02.09.2004. She also stated that the said partition deed was executed between the first respondent, his brother

S.K.Ravindran as one part and she and her mother, Smt. Pechiammal as other part. She further stated that as per the said partition deed, the suit property including the compound wall therein absolutely belongs to her and during the month of May 2013, she made an arrangement to raise the height of the compound wall which is already existing on the northern side and at that time, the respondents herein obstructed her from raising the compound wall and preferred a false complaint before the police. She further stated that after enquiry, the police had closed the said complaint as false and thereafter, the respondents sent a lawyer's notice dated 27.05.2013 alleging that the compound wall is a common one and for that, she sent a reply through her lawyer dated 01.06.2013 denying the said claim.

11. She further stated in the plaint that a reading of the said partition deed would vouch the fact that there is no mention of common land or about the compound wall being held in common and as such a person claiming right under the said partition deed cannot be put forth such an imaginary rights against the written contention of the partition deed. She further stated that the respondents are estopped from raising

the plea that the compound wall is a common property. So, it is clear that the petitioner is claiming exclusive right over the said compound wall based on the registered partition deed dated 02.09.2004, in which, the first respondent herein is also a party. Therefore, the contention of the learned counsel for the petitioner that since the petitioner claimed right based on the registered partition deed, in which, the first respondent is also a party, the petitioner bonafidely believed that it was sufficient to file a suit for bare injunction appears to be an acceptable one.

12. It is to be pointed out that the first respondent in his counter statement has not denied the execution of the said registered partition deed dated 02.09.2004. He took a plea in the counter statement that since the suit property is a natham land, the plaintiff cannot claim right over the said property and also stated that the other legal heirs of late S.K.Kempaiah were not joined as parties in the said partition deed and hence the said partition deed is a void document. He also stated that since the said partition deed is the void document, the plaintiff cannot claim any right based on the said document. The aforesaid issues have to be decided in the suit and not in the application filed to amend the plaint.

13. In ***Bagavatula Gopalakrishna Maruthi and Others Vs. Dhulipulla Sreedhara Rao and another*** (cited supra), this court held 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 by amendment, but where certain facts are alleged which facts were available to the plaintiff even before filing of the suit, the plaintiff should have asked the said relief in the original plaint itself.

14. At this juncture, it would be relevant to refer to the decision in ***Anathula Sudhakar Vs. Buchi Reddy (dead) By L.Rs and others (2008) 4 SCC 594***, wherein the Hon'ble Supreme Court in paragraph No.14 has observed as follows:

“12. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a

trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

15. From the aforesaid decision, it is clear that where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over a title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. It is also clear

that where the plaintiff, believing that a defendant is only a trespasser or a wrongful claimant, without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction with the permission of the court to file a comprehensive suit for declaration and injunction. He may file a suit for declaration with consequential relief, even after the suit for injunction is dismissed where the suit raised only the issue of possession and not any issue of title.

16. In this case, since the plaintiff claims right based on the partition deed in which the first respondent is also a party and that the first respondent has not denied the recitals of the said partition deed, it has to be presumed that the plaintiff has filed the suit for bare injunction bonafidely believing that the respondents have no right or title over the said compound wall, but subsequently she felt that the declaratory relief

is necessary and hence she filed a petition to amend the plaint and it cannot be said that there was no bonafide on her part.

17. In ***Mohinder Kumar Mehra Vs. Roop Rani Mehra and Others***, (cited supra), 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 had led evidence even on the amended pleadings and plaintiff's case was that in view of the fact that the parties led evidence on amended pleadings, the allowing the amendment was a 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.”

18. In this case also already necessary pleadings made in the plaint with regard to exclusive right of the plaintiff over the said compound wall. Further, admittedly, the plaintiff had filed a proof affidavit as PW1 claiming absolute right over the compound wall. Therefore, the allowing of the amendment was a mere formality. The defendants in no manner can be said to be prejudiced by the amendment since the plaintiff led her evidence on the proposed pleadings also i.e., with regard to her right over the said compound wall.

19. For the aforesaid reasons, this court is of the view that the order passed by the learned District Munsif in dismissing the application in I.A.No.1134 of 2014 is liable to be set aside. Accordingly, this CRP is allowed and the order passed by the trial court in I.A.No.1134 of 2014 is set aside. I.A.No.1134 of 2014 in O.S.No.118 of 2013 on the file of the District Munsif, Sathyamangalam is allowed. Consequently, connected miscellaneous petition is closed. No costs. The trial court is directed to give one week to the plaintiff to amend the plaint as sought in I.A.No.1134 of 2014 and thereafter give an opportunity to the defendants to file their additional written statement and also give an opportunity to

both parties to adduce additional evidence and dispose of the suit as early as possible.

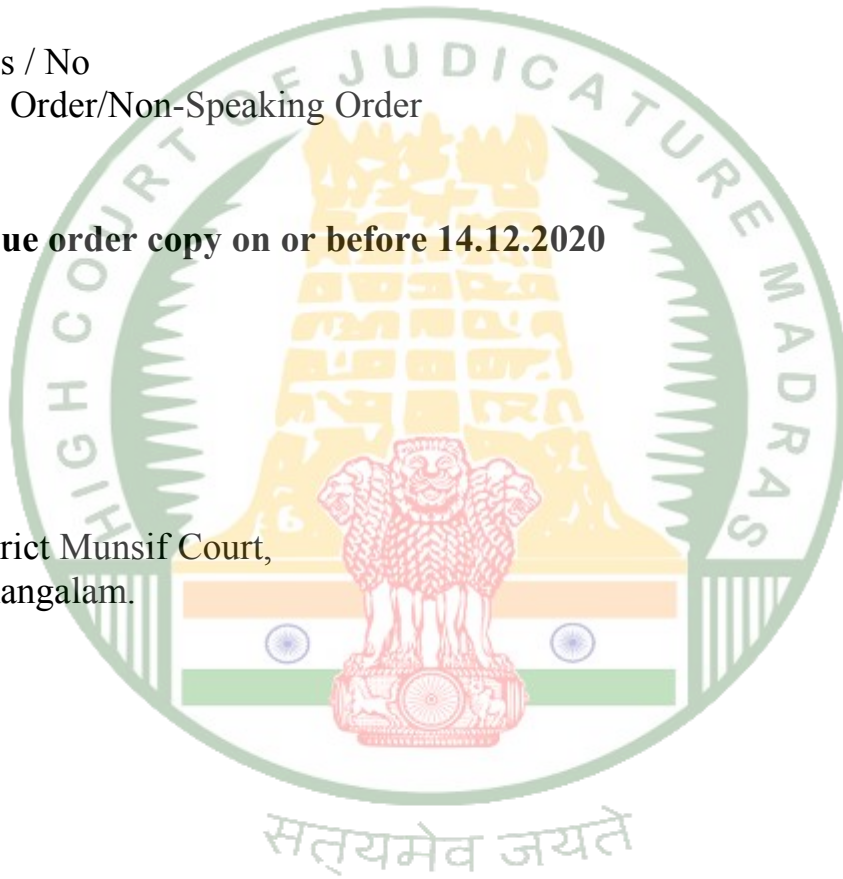
09.12.2020

Index:Yes / No
Speaking Order/Non-Speaking Order
gv

Note: Issue order copy on or before 14.12.2020

To

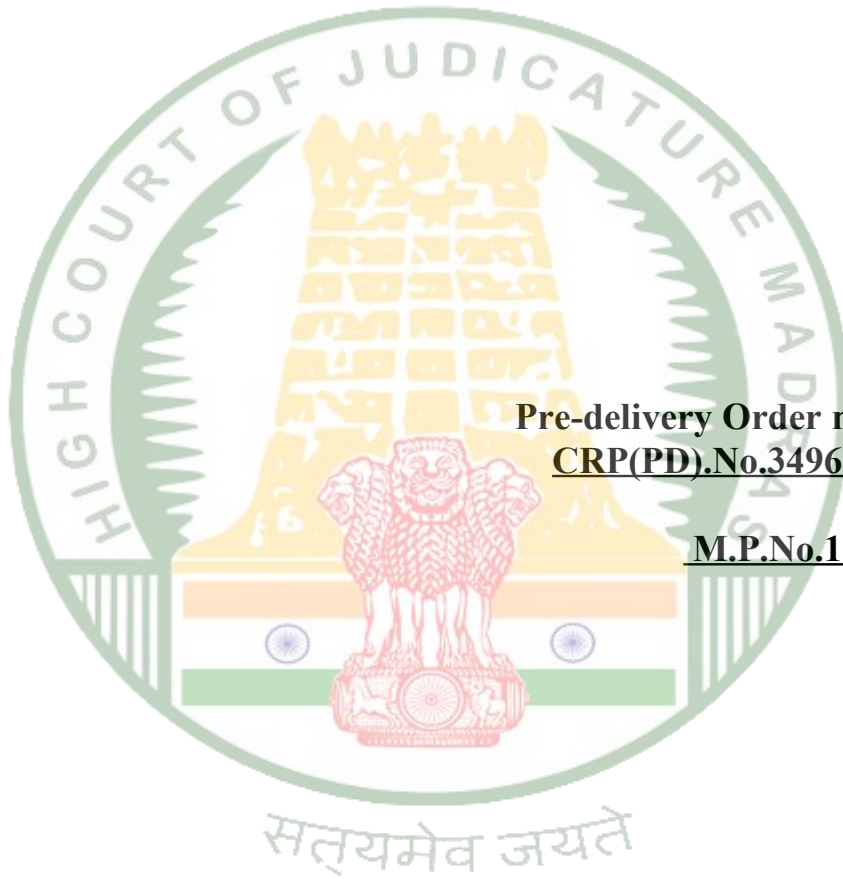
The District Munsif Court,
Sathyamangalam.



WEB COPY

P. RAJAMANICKAM. J.

gv



**Pre-delivery Order made in
CRP(PD).No.3496 of 2015
and
M.P.No.1 of 2015**

WEB COPY

09.12.2020