

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (PD) No.968 of 2013
and
M.P.No.1 of 2013

Jala Vijayachandrika

..Petitioner/Plaintiff

Vs

1.R.Lakshmikumari
2.B.Balaji
3.Asha Devi
4.N.Hemamalini

..Respondents/
Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 07.12.2012 passed by the Subordinate Judge, Poonamallee, in I.A.No.880 of 2012 in O.S.No.206 of 2010.

For Petitioner : Mr.O.Padmaprakash

For Respondents : Mr.A.M.Packianathan Easter for R2
No appearance

ORDER

The petitioner is the plaintiff in O.S.No.206 of 2010 and the petitioner in I.A.No.880 of 2012 and respondents are the defendants in the suit and respondents in the above said application.

2. The petitioner filed suit against the respondents in O.S.No.206 of 2010 on the file of the Subordinate Court, Poonamallee, for partition and separate possession of 1/5th in the suit property. In the said suit, after trial, the petitioner had filed application in I.A.No.880 of 2012 under Order 6 Rule 17 CPC to amend the plaint. The said petition was dismissed by the trial court. Challenging the said order passed by the trial court in I.A.No.880 of 2012, the Revision Petitioner is before this court.

3. The learned counsel for the petitioner would submit that though the petitioner filed suit for partition, during the pendency of the suit, the matter was settled between the parties out of the court and also they entered into a memorandum of understanding viz., Partition agreement on 09.06.2011 and therefore, the petitioner wanted to amend the plaint based on the terms of the

agreement entered into between the parties in the memorandum of understanding of Partition Agreement. The said application for amendment is numbered as I.A.No.880 of 2012. In the order dated 07.12.2012, in page 2 of the order, it is stated that "*the petitioner has filed unnumbered application to amend the plaint regarding memorandum of understanding alleged to have been executed between her and the defendants on 09.06.2011 i.e., subsequent to the suit*", which showed non application of mind on the part of the learned Judge and passed the said order. Further, it is submitted that while dealing with the said application to amend the plaint under Order 6 Rule 17 CPC, the court should not go into the merits of the case and it should only consider the averment made in the affidavit and pass the order. The order shows that the learned Judge gone into the merits of the case, which wants interference of this court. In support of his contentions, he has placed reliance on the Full Bench decision of this court in the case of ***Hi.Sheet Industries ..Vs .. Litelon Limited [2006 (5) CTC 609]*** and also Judgment of the Hon'ble Supreme Court in the case of ***Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others [(2006) 4 SCC 385]*** The learned counsel for the petitioner submitted that therefore, the order passed by the trial Judge required interference of this court.

4. The learned counsel for the respondents would submit that the petitioner filed suit for partition. After filing written statement and after framing of issues, the trial commenced even on 04.02.2011 itself and after the commencement of the trial, petitioner side evidence was over, and at that time, at request of both the parties, the matter was referred to Lok Adalat for settlement. But no settlement was arrived at in Lok Adalat and therefore, the matter was sent back to the trial court to proceed with the trial. Thereafter, defendants side evidence was recorded. At the time of argument, the petitioner filed application to recall P.W.1 and also to receive documents viz., memorandum of understanding. The said petition was dismissed by the trial court. Challenging the said order, the petitioner filed Revision before this court and this court in C.R.P.Nos.3802 and 3803 of 2012 dismissed the civil revision petitions and confirmed the order of the trial court. The petitioner has not challenged the said order passed by this court. Thereafter, she filed application in I.A.No.880 of 2012 under Order 6 Rule 17 CPC to amend the plaint. Since the respondents denied the document even in the counter filed in the earlier application and the trial court has dismissed the said application and this court also confirmed the order, the present amendment application based on the very same document is not maintainable. Though initially, the

said application was returned on the ground of maintainability, counsel for the petitioner represented the petition. Subject to the maintainability, the Registry of the trial court has taken the application on file and therefore the order of dismissal of the trial court passed in the amendment application did not require any interference.

5. Heard both sides and perused the records.

6. Admittedly, the petitioner filed suit originally in O.S.No.83 of 2007 on the file of District Court, Thiruvallur. Subsequently, the suit was transferred to the file of the Subordinate Court, Poonamallee and re numbered as O.S.206 of 2010. The petitioner filed suit for partition claiming 1/5th share in the suit property. After filing written statement, framing of issues, and after completion of trial at the time of argument, the petitioner filed application in unnumbered I.A., under Order 6 Rule 17 CPC to amend the plaint. The said petition was dismissed by the trial court and therefore, challenging the said order, the petitioner/plaintiff is before this court.

7. Though the learned counsel for the petitioner vehemently contended by placing reliance on the order of the trial court dated 07.12.2012, page 2

para 2 , wherein it is stated that *"the petitioner has filed unnumbered application to amend the plaint regarding memorandum of understanding alleged to have been executed between her and the defendants on 09.06.2011 i.e., subsequent to the suit"*, the cause title of the order of I.A., shows that it is I.A.No.880 of 2012. In the typed set of papers filed by the petitioner, in page No.53 and page No.60, the short cause title is shown as "I.A.No..unnumbered I.A. In O.S.No.206 of 2010." In page No.61 of the order dated 07.12.2012, it is mentioned as "I.A.No. unnumbered of 2012." Therefore, the court below has mentioned that the petitioner has filed unnumbered application. Therefore, this court does not find any error in the said order. Subsequently, the application has been numbered as I.A.880 of 2012. Therefore, the contention raised by the learned counsel for the petitioner that there is non application of mind on the part of the trial Judge, while passing the said order, is not sustainable.

8. The other contention of the learned counsel for the petitioner is that the court below cannot discuss about the merits of the case at the time of dealing with the application to amend the plaint. There is no quarrel with the proposition of law laid down by the Apex Court supra and decisions of the Full Bench of this Court, in this regard. It is true that any merits of the case

need not be discussed while dealing with application to amend the plaint under Order 6 Rule 17 CPC. But in the case on hand, the suit is filed by the Plaintiff for partition and therefore, though the merits of the case need not be discussed, taking note of the suit proceedings, wherein, after trial and at the time of arguments, the petitioner filed application stating that the party entered into agreement during the pendency of the trial, therefore, plaint has to be amended as per the agreement of partition, alleged to have been entered into between the parties. But, it is seen that the petitioner earlier filed suit in the year 2007 before the Principal District Judge, Tiruvallur, but thereafter, it has been transferred and renumbered as O.S.No.206 of 2010. The trial commenced in the year of 2011. P.W.1 was examined on 04.02.2011 and plaintiff side evidence was closed on 28.02.2011. Defendants side evidence commenced by examining second defendant as D.W.1 on 11.03.2011 and his evidence was completed on 30.03.2011. On 07.04.2011, D.W.2 was examined in chief. At that stage, the petitioner sought for referring the matter to the Lok Adalat. Therefore, the trial court referred the matter to Lok Adalat held on 04.08.2011 and the case bundle was received from Lok Adalat on 10.01.2012 with endorsement “no settlement arrived between the parties.” Thereafter P.W.2 was cross examined on 22.2.2012 and defendants side evidence was closed on 02.04.2012, and the case was posted for arguments

on 19.4.2012. But this document i.e., alleged memorandum of understanding [Partition Agreement] if existing, the petitioner ought to have shown that document to D.W.2 at the time of cross examination, but the petitioner kept quiet till 19.04.2012 and that the matter was posted for argument. But on 19.04.2012 at the time of arguments, the petitioner filed applications in I.A.Nos.243 of 2012, and 244 of 2012 to recall PW.1 and also to receive the alleged memorandum of understanding dated 09.06.2011. The said applications were dismissed. Challenging the same, they filed the revision before this court. The Honourable Chief Justice, on hearing the Civil Revision Petitions, dismissed the revision. In paragraph 2 of the Revision order, the facts was clearly narrated and given reasons for dismissal also. It is useful to refer to the order passed by this court in in CRP(PD).No.3802 and 3803 of 2012, dated 19.10.2012.

“2. The petitioner filed the suit in O.S.No.206 of 2010 for partition of the suit property. Admittedly, when the suit was pending for examination of the defendants' witnesses, on the request of the petitioner, the suit was referred to Lok Adalat on 04.08.2011 and returned on 10.01.2012 with an endorsement “no settlement arrived between the parties”. The memorandum of understanding is dated 09.06.2011. But, the

petitioner has not whispered anything about the said memorandum of understanding before 04.08.2011 or even during the Lok Adalat proceedings. Only after the evidence on the defendants' side was closed on 02.04.2012, the petitioner has filed the petitions to re-open her evidence and to receive the alleged memorandum of understanding dated 09.06.2011. Hence, the trial court dismissed both the applications on the ground that they were filed only to drag on the proceedings.

3. In my view, the court below rightly dismissed both the interlocutory petitions since they were filed belatedly without any valid reason. Accordingly, both the revision petitions are dismissed.”

9. Though the merits of the case need not be discussed while deciding the amendment application, in the case on hand, the conduct of the party has to be taken note of. Earlier when the petitioner sought for recall of P.W.1, in the counter filed in the said earlier applications, the respondents had not admitted the said document and the trial court dismissed the applications and when the said orders were challenged before this court, this court also dismissed the revision petitions filed by the petitioner and it has been clearly pointed out by the Honourable Chief Justice of this Court, in the said revision order that even during the Lok Adalat held on 04.08.2011 or even during the

Lok Adalat proceedings, neither the petitioner produced the document nor referred the document before the Lok Adalat, nor they filed the documents before closing of the trial. As such, now based on the very same document, the petitioner has filed the present application in I.A.880 of 2012 to amend the plaint and further she has not filed the original document and the defendants have not admitted the execution of the document. Therefore, though the petitioner has stated that the alleged document came into existence on 09.06.2011, at the time of trial, after completion of the plaintiff side evidence, during the pendency of the suit, the matter was referred to Lok Adalat. But the petitioner never produced the said document either before the Lok Adalat or before the Trial court at the time of trial. After completion of trial at the time of arguments, the petitioner has filed applications to mark the said disputed document even without any original document. Therefore, under these circumstances, there is no merit in the Revision Petition. The Full Bench decision of this court referred to by the learned counsel for the petitioner is with regard to the amendment application prior to Act 22 of 2002. The Full Bench also referred to the application therein as prior to the amendment. But after Amendment Act 22 of 2002, now proviso to Order 6 Rule 17 CPC, is very clear that after commencement of the trial, allowing the application is only discretionary power of the court. The proviso reads as

follows:-

“Provided that no Application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

10. As per the proviso, no application for amendment 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.

11. Though admittedly, the said document alleged to have executed on 09.06.2011 that is during the trial, however, as observed by this court in the earlier revision in CRP.(PD).Nos.3802 and 3803 of 2012, after the said alleged date, the matter was referred to Lok Adalat. Subsequently, the bundle received from Lok Adalat with endorsement “no settlement arrived at between the parties”. Subsequently, D.W.2 was cross examined and defendants side evidence closed on 02.04.2012 and argument was closed on

19.04.2012. Till then, the petitioner has not filed any such application. Therefore, as the application is filed post trial amendment, it is only subject to the satisfaction of the court. Further the petitioner was not diligent to file the alleged agreement dated 09.06.2011 either before the Lok Adalat at the time of reference to the Lok Adalat for settlement of the matter or filed before the trial court soon after suit papers sent from the Lok Adalat to the court till the commencement of the argument. The defendants stoutly denied the execution of the said document and no witnesses also said to have signed in the documents. Therefore, at these circumstances, there is no merit in the Civil Revision Petition and it is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

04.09.2020

Index: Yes/No

Speaking/Non-Speaking order
nvsri

To

1.The Subordinate Judge, Poonamallee.

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

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P.VELMURUGAN,J.

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