

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.247 of 2021 and
C.M.P.No.2366 of 2021 and Caveat No.4140 of 2020

1. Gowthaman
2. Deepak

... Petitioners

Vs.

P.Vengai Rajendran

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal Order in I.A.No.104 of 2019 in A.S.No.81 of 2018 dated 28.10.2020 on the file of the District Court, Erode in dismissing the application filed to amend the plaint to include the alternative relief for recovery of possession.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.A.Sundaravadhanan

O R D E R

The present Civil Revision Petition has been filed under Article 227 of Constitution of India as against the decree and order made in I.A.No.104 of 2019 in A.S.No.81 of 2018 dated 28.10.2020.

2. The case of the petitioners is that a suit in O.S.No.181 of 2011 was filed by the present Revision Petitioners as against the present respondent in the Revision Petition, who is the defendant therein seeking for a prayer of permanent injunction restraining the respondent / defendant and his men, agents, assigns, successors in interest hirelings etc., from in any manner interfering or disturbing the petitioners / plaintiffs peaceful possession or enjoyment of the suit property on the ground that the petitioners / plaintiffs are sons of one late Mr.M.R.Chandran and mother Sivakami. Further, the said M.R.Chandran and his mother, Mrs.Saraswathy, had purchased the suit properties by various documents registered before the

Avalpoondurai, Sub Registrar's Office in the name of Sivakami and Chandran on various dates. Thereafter, the petitioners / plaintiffs' father died intestate on 02.12.2010 and upon his death, the petitioners / plaintiffs became entitled for 1/4th share each in the estate of deceased and the plaintiffs' mother Sivakami and the mother of the deceased Saraswathy became entitled for 1/4th share each. Clubbing all the suit properties, the petitioners / plaintiffs' mother Sivakami and the deceased father's mother, viz., Saraswathi conveyed the suit properties in favour of plaintiffs by way of execution of a settlement deed dated 08.04.2011, which was registered in Document No.2344 of 2011 before the SRO, Avalpoondurai and the petitioners / plaintiffs thus, became the joint owners of the property and they are in possession and enjoyment of the suit property.

3. However, the respondent / defendant herein had seem to have proclaimed unfounded rights over the suit property, as the respondent / defendant has an army of vagrants at his disposal and the threat of physical dispossession from the suit property looms large, the respondent / defendant sent few of his men on 28.11.2011 after creating a scene in the said locality in the suit property and continuously harassing the petitioners / plaintiffs. Since there is a threat of interference from the respondent / defendant by trying to dispossess the petitioners/ plaintiffs from the suit property, the petitioners / plaintiffs had no other option than to approach the Court seeking for permanent injunction as against the respondent / defendant herein.

4. Though the respondent / defendant filed written statement refuting the claim, had asserted that late Mr.M.R.Chandran and C.Sivakami, who are the parents of the petitioners / plaintiffs are the owners of the schedule mentioned property and they have entered into an agreement for sale of suit schedule property at Rs.5,00,000/- to the respondent / defendant and they received an advance of Rs.1,00,000/- as early as 15.11.2002 and the possession of the suit property was handed over to the defendant on the date of oral agreement. However, the Sub Court, Perundurai decreed the suit in O.S.No.181 of 2011 in favour of the petitioners / plaintiffs on 11.08.2017 as against which, A.S.No.81 of 2018 is filed by the respondent / defendant, which is pending before the Principal District Judge, Erode. Pending Appeal, I.A.No.104 of 2019 has been filed by the petitioners / plaintiffs seeking amendment in the prayer of the plaint under Order 6 Rule 17 and the same came to be dismissed by the Principal District Judge, Erode, as against which, the present Revision Petition is filed.

5. Mr.Ragavachari, learned counsel appearing for the petitioners argued that an application under Order 6 Rule 17 ought not to have been dismissed, merely because it is in the appellate stage, since the appeal is the continuity of the original suit, the Principal District Judge, Erode ought to have allowed the amendment to the plaint in O.S.No.181 of 2011 and no prejudice would be caused to the defendant therein. The learned counsel would also submit that the District Court have failed to appreciate the suit was filed for permanent injunction and the issues framed in the suit pertains not only to possession also to an agreement entered into between the petitioners / plaintiffs' father as well as the validity of the settlement deed dated 08.04.2011 in favour of the petitioners / plaintiffs. He would also further contend that since the petitioners / plaintiffs had sought for relief of recovery of possession, as an alternative prayer and affixed appropriate court fee payable on the plaint, the court below ought to have taken or permitted the amendment, as it was only an alternative prayer and it is maintainable at any stage of proceedings, as the appeal is only the continuity of original proceedings.

6. The learned counsel appearing for the petitioners has placed reliance on the following judgments:-

(i) K.Thakshinamoorthy and Another Vs. State Bank of India reported in (2001) 1 CTC 594

(ii) The Victoria Edward Hall Vs. M.Samraj and Others reported in 2001 (3) CTC 129.

(iii) Ramasamy Pandithar Vs. Ramalinga Kounder reported in 2004 (3) MLJ 250

(iv) Ramachandran Vs. Baskar Sethupathi reported in 2012 8 MLJ 805

(v) V.Jayalakshmi and others Vs. Kasirajan and others reported in 2016 5 LW 810

(vi) Srinivasan @ Balaji Vs. Jayalakshmi alias Vidhya reported in 2002 2 LW 527.

7. Per contra, the learned counsel for the respondent would submit that the amendment of plaint detailed in the petition is unsustainable and liable to be dismissed on the ground that the application is belated and relief of possession ought to have been raised before the commencement of trial before the trial court and no explanation has been offered why such application has not been filed before the trial court and the said proposed amendment would clearly alter the character of the suit. Further, a new plea, which is opposed to earlier stand has now been sought to be introduced. It is also stated by the petitioners that they are in actual possession of the suit property in the plaint and the respondent attempted to tress-pass into the suit property on 28.11.2011, under these

circumstances, the petitioners cannot be allowed to turn around and say that they were entitled for possession if this Court holds that they are out of possession. It is noteworthy that there is no evidence for such relief.

8. The learned counsel for the respondent would further submit that petitioners having realised that they would suffer an adverse finding at the hands of Court, this vexatious petition has been filed and also stated that if this amendment is carried out, then, the court lacks pecuniary jurisdiction and the same should not be allowed and prayed for dismissal of the same.

9. Heard the learned counsel appearing for the petitioners as well as the learned counsel for the respondent and perused the materials available on record.

10. It is seen from the record that initially the suit in O.S.No.181 of 2011 is filed by the petitioners for a permanent injunction restraining the respondent / defendant from in any manner from interfering or disturbing the plaintiffs peaceful possession and enjoyment of the suit property. Moreover, for useful reference, the pleadings in the plaint in O.S.No.181 of 2011, at Paragraph Nos.9 and 10 and the pleadings with regard to the cause of action in Paragraph no.11 is reproduced hereunder:-

9. During July 2011, the defendant again went around asserting unfounded rights over the suit property and also tried to interfere with the possession which was then in the control of the plaintiffs' mother. Under such circumstances, the plaintiffs mother was constrained to give a complaint to police and they in turn registered a case under various sections of the penal code. The case is presently under investigation in Crime No.31 of 2011, District Crime Branch, Erode.

10. The defendant is not person who would subdue his acts lightly. The defendant went into hiding and upon securing bail has been repeating his nefarious and unlawful acts. The defendant has an army of vagrants at his disposal and the threat of physical dispossession from the suit property looms large. The defendant sent few of his men on 28.11.2011 and they left the place after creating a scene. Suffice to say that if the defendant has any valid right under any document, it is for him to get his relief worked through process of Law and not to take law into hands and harass the plaintiffs. Since the threat of interference and dispossession from the suit property subsists, the plaintiffs are constrained to file this suit for permanent injunction. The plaintiffs most

respectfully submit that the defendant can be checked only by orders of Court.

11. The cause of action for the present suit arose during 02.12.2010 when the plaintiffs father died intestate: subsequently when the plaintiffs mother and paternal grand mother conveyed their right, title and interest over the suit property in favour of the plaintiffs by gift settlement deed dated 08.04.2011; subsequently when the plaintiffs became the lawful owners of the suit property; being persons in possession and enjoyment of the suit property; subsequently on 28.11.2011 when the defendant through his men tried to disturb the peaceful possession of the suit property by the plaintiffs and subsequently when the threat still remains; all at Thenmugam Vellode Village, Perundurai Taluk within the jurisdiction of this Honourable Court."

11. The suit was allowed decreeing in favour of the petitioners / plaintiffs herein, as against which, A.S.No.81 2018 is filed by the respondent / defendant, which is pending before the Principal District Judge, Erode. Subsequently, I.A.No.104 of 2019 was filed seeking to permit the petitioners to amend the plaint. The amendment sought to be introduced is as follows:-

"(a) In the plaint add the following Paragraph as No.10(1) after the Paragraph No.10.

In the event of this Honourable Court coming to the conclusion that the plaintiffs is not entitled to the relief of permanent injunction in the alternative grant relief of recovery of possession of suit property within a time frame as stipulated by this Court and in the event of failure put the plaintiffs in possession through officer of Court.

(b) In Para No.12 of the plaint i.e., valuation column add the following as (b) and prefix the existing para as (a)

And the value of the alternative relief is Rs.15,00,000/- and a court fee of Rs.45,000/- is affixed under Section 30 of Tamilnadu Court Fees and Suits Valuation (Amendment) Act, 2017 (Tamil Nadu Act 6/2017) Para No.13 i.e., in the prayer column add the following as after No.1.

Alternatively

2. Direct the defendant to deliver possession of the suit property to the plaintiffs within a time frame as stipulated by this Honourable Court and upon failure to comply, put the plaintiffs in possession through process of Court and Law;"

12. On the plain reading of the said amendment sought to be introduced, it is seen that the same is totally contradictory to the pleadings made in the plaint in O.S.No.181 of 2011, wherein, in the original plaint, the petitioners / plaintiffs had asserted that they are in physical possession of the suit property and stated the respondent / defendant is trying to dispossess them from the suit property. However, in the amendment sought to be introduced in the plaint after suit being decreed is that the respondent is in settled possession of the suit property and further the petitioners' counsel also argued before the court below that respondent could be evicted from the suit property by recourse to due process of law.

13. It is also stated by the petitioners in their affidavit filed in support of the petition in I.A.No.104 of 2019 that the alternative prayer has been made due to the reason that the petitioners has categorically admitted that the title of the suit property and the alternative prayer is only by way of abundant caution and it does not tantamount to acceptance of the case of the petitioners. This Court is not in conformity with the arguments putforth by the learned counsel for the petitioners. As it is seen that the main suit, viz., O.S.No.181 of 2011, which was originally filed is for permanent injunction asserting that the petitioners / plaintiffs are in possession of the suit property. However, the amendment has been sought to be made is totally contradictory to the pleadings set out in the plaint in O. S.No.181 of 2011, which is for recovery of possession.

14. It is also seen that the nature of amendment is totally different from the original prayer made in the plaint. No reason is also explained in the affidavit filed in support of the amendment petition as to why such prayer or pleading is not sought in the original plaint itself and also the prayer of permanent injunction on the ground that the petitioners / plaintiffs are in possession of the suit property is totally against the prayer seeking amendment for recovery of possession. None of the citations cited by the learned counsel for the petitioners is applicable to the present case on hand. Hence this Court is of the view that the amendment sought to be introduced is contradictory to the prayer sought originally made in the suit for permanent injunction on the basis of possession held by the petitioner and from prayer of recovery of possession which is sought to be introduced by way of amendment. This Court finds no reason to interfere with the orders passed by the learned Principal District Judge, Erode in I.A.No.104 of 2019 dated 28.10.2020, who has rightly dismissed the said application filed by the petitioners..

Under these circumstances, the present Revision Petition

fails and the order passed by the learned District Judge, Erode in I.A.No.104 of 2019 in A.S.No.81 of 2018 dated 28.10.2020 is confirmed and the Revision Petition is dismissed. Consequently, connected miscellaneous petition and caveat petition are closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

ssd

To

1. The Principal District Judge,
Erode

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

+1cc to Mr.V.Raghavachari, Advocate SR.No.26633

C.R.P.No.247 of 2021 and
C.M.P.No.2366 of 2021

SMI (CO)
GMY (02/07/2021)



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