

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP.(PD).No.4107 of 2017
and
CMP.No.19239 of 2017

Jaya alias Jayaselvam Petitioner/Plaintiff

Versus

1.Jayalakshmi

2.Sripaul Respondents/Defendants

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 15.09.2017 made in I.A.No.449 of 2017 in O.S.No.320 of 2013 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner : Mr.T.D.Vasu
for Mr.S.Muthukumar

For Respondent : Mr.R.Gururaj (for R2)
: Notice served - R1

O R D E R

This Civil Revision Petition is directed as against the fair and decretal order dated 15.09.2017 passed in I.A.No.449 of 2017 in O.S.No.320 of 2013 on the file of the Principal District Munsif Court, Cuddalore, thereby, dismissing the application seeking for amendment.

2.The petitioner is the plaintiff and the respondents are the defendants in the suit. The petitioner filed the suit for permanent injunction in respect of the suit property. Subsequently, the petitioner filed an Interlocutory Application in I.A.No.402 of 2015, for amendment to include the prayer for declaration to declare the sale deed dated 09.07.2013 executed in favour of the second respondent as null and void and the said application was allowed and impleaded the second respondent as party in the suit. After closing the evidence of the plaintiff/Pw.1 and Dw.1 and marking exhibits Exs.D1 to D13, the petitioner has come forward with the application for amendment

to include the prayer of possessory title by adverse possession in respect of the suit property.

3.A perusal of the record reveals that the petitioner filed the suit for bare injunction on the strength of unregistered sale agreement dated 16.02.1986. Thereafter, she filed an application for amendment to implead the second respondent herein as the second defendant in the suit and also for including the prayer of declaration to declare the sale deed executed in favour of the second respondent by the first respondent's power of attorney, dated 09.07.2013 as null void. Even then, the petitioner did not choose to file any amendment application to include the prayer for specific performance. At the fag end of the trial, the petitioner has come forward with the petition with the prayer for further amendment in the plaint to include the prayer for declaration to declare his possessory title by adverse possession. In this regard, the learned counsel for the second respondent relied upon the Judgement of Hon'ble Supreme Court of India in the case of Atma Ram vs. Charanjit Singh reported in (2020) 2 LW 777, wherein, it has held as follows:-

"But in this case, the question was not merely one of limitation. As we have stated earlier, the suit agreement of sale was dated 12.10.1994. According to the petitioner, the last date fixed for the performance of the obligations under the contract, was 7.10.1996. A legal notice was issued by the petitioner on 12.11.1996. But the plaint itself was presented only on 13.10.1999, which was beyond three years of the date 7.10.1996, fixed under the agreement of sale for the performance of the contract. (Though the petitioner has claimed before us that the plaint was presented on 3.10.1999, the copy of the judgment as well as the decree of the Trial Court indicate the date of presentation of the plaint as 13.10.1999). The relief sought in the plaint as it was originally presented, was for a mandatory injunction to direct the respondent to receive the balance sale consideration and to get a document of transfer effected in favour of the petitioner. The petitioner/plaintiff was obviously conscious of the nature of the relief prayed for by him. This is why he valued the relief claimed in the suit at Rs.250/- and paid a fixed court fee of Rs.25/-. The respondent took an objection in his written statement, to the maintainability of the suit, in the form in which it was filed. Therefore, the Trial Court also framed an issue as to whether the suit was not

maintainable in the present form, as issue No.5. It was only after issues were framed on 12.10.2002 that the Trial Court took up the application filed by the respondent for the dismissal of the suit. It is in that application that the Trial Court passed the order dated 09.08.2003 permitting the petitioner/plaintiff to pay the deficit court fee by treating the prayer made as one for specific performance. Instead of addressing the issue as to whether the petitioner could indirectly seek specific performance of an agreement of sale, by couching the relief as one for mandatory injunction and paying a fixed court fee as payable in a suit for mandatory injunction, the Trial Court, by a convoluted logic, chose to treat the suit as one for specific performance and permitted the petitioner to pay deficit court fee.

7. As a matter of fact, if the suit was actually one for specific performance, the petitioner ought to have at least valued the suit on the basis of the sale consideration mentioned in the agreement. But he did not. If the suit was only for mandatory injunction (which it actually was), the only recourse open to the petitioner was to seek an amendment under Order VI, Rule 17 CPC. If such an application had been filed, it would have either been dismissed on the ground of limitation (K.Raheja Constructions Ltd., vs. Alliance Ministries 1996-1-L.W. 143=1995 Suppl. (3) SCC 17)) or even if allowed, the prayer for specific performance, inserted by way of amendment, would not have been, as a matter of course, taken as relating back to the date of the plaint (Tarlok Singh vs. Vijay Kumar (1997-2-L/W. 406 = 1996 (8) SCC 367), Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit vs. Ramesh Chander (2010 (14) SCC 596)). Therefore, a shortcut was found by the petitioner/plaintiff to retain the plaint as such, but to seek permission to pay deficit court fee, as though what was filed in the first instance was actually a suit for specific performance. Such a dubious approach should not be allowed especially in a suit for specific performance, as the relief of specific performance is discretionary under Section 20 of the Specific Relief Act, 1963."

4.The Hon'ble Supreme Court of India held that dubious approach on the part of the plaintiff should not be allowed

especially in a suit for specific performance as the relief of specific performance is a discretionary under Section 20 of the Specific Relief Act, 1963. In the above case, originally, the suit was filed for bare injunction and the plaintiff ought to have atleast valued the plaint on the basis of sale consideration mentioned in the agreement. However, it held that the suit is only for bare injunction. The only recourse upon the plaintiff was to seek for amendment of the plaint to include the relief of specific performance and it can be either accepted or rejected on the ground of limitation or even if allowed, the prayer for specific performance, inserted by way of amendment, would not have been, as a matter of course, taken as relating back to the date of the plaint. Therefore, a short cut was found by the petitioner to retain the plaint as such while seeking permission to pay deficit court fee, as though what was filed in the first instance was actually a suit for specific performance.

5. In the case on hand as stated supra, the petitioner filed the suit for bare injunction, subsequently, amended and included the prayer for declaration to declare the sale deed executed in favour of the second respondent by the first respondent's power of attorney as null and void.

6. Now, the petitioner has come forward with the prayer for declaration in respect of the suit property to claim possessory title, which cannot be allowed that too at the fag end of the trial. The Court below has rightly dismissed the application in I.A.No.449 of 2017 in O.S.No.320 of 2013 and this Court does not find any infirmity or illegality in the order passed by the Court below.

7. In view of the above discussion, this Civil Revision Petition is dismissed by confirming the order dated 15.09.2017 made in I.A.No.449 of 2017 in O.S.No.320 of 2013 on the file of the Principal District Munsif Court, Cuddalore. Consequently, the connected civil miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

klt

To

The Principal District Munsif Court,
Cuddalore.

+1cc to Mr.D.Baskar, Advocate, S.R.No.17376

CRP. (PD) .No.4107 of 2017
and
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CP (CO)
KM(23/04/2021)



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