



C.R.P(PD)No.892 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.03.2022

Pronounced on : 27.05.2022

CORAM: **JUSTICE N.SESHASAYEE**

C.R.P(PD)No.892 of 2021
& CMP.No.7310 of 2021

P.S.Jayakumar

... Petitioner

Vs.

S.Sathyananthan (Died)

1.Kavitha

2.S.Mohan Kumar

3.Dharani

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 11.02.2021 made in I.A.4 of 2020 in O.S.No.32 of 2015 on the file of the Hon'ble District Munsif, Coonoor.

For Petitioner	:	Mr.S.R.Raghunathan
For Respondents 1 to 3	:	Mr.D.Ravichander



C.R.P(PD)No.892 of 2021

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ORDER

The plaintiff, who was aggrieved by an order in his Application in I.A.No.4 of 2020 in O.S.No.32 of 2015 has come before this Court with the Revision. The suit is laid for bare injunction and the application in question is taken out by him seeking the leave of the Court to withdraw the suit with a leave to file a fresh suit on the same cause of action, which the trial Court has dismissed.

2.The case of the plaintiff can be briefly stated;

- A certain K.G.Naidu was entitled to a block of land measuring about 1.34 acres. Vide a sale deed dated 13.10.1997, he conveyed an extent of 75 cents to the plaintiff and along with it he had also handed over possession over the balance extent of 59 cents. So far as the extent of 59 cents is concerned, the plaintiff contends that this has been enjoyed by his vendor for several decades and that he has come into possession of this block of 59 cents in continuation of the possession of his vendor. In deed, the Revenue Authorities have also granted patta for the entire extent to him.
- While so, a certain Yamuna Devi, who claims to be the descendant of K.G.Naidu executed a sale deed dated 27.10.2010 in favour of the



C.R.P(PD)No.892 of 2021

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defendant concerning an extent of 1.0 acre. This sale deed is also referred to in the plaint. He has also pleaded that he has prescribed title to the 59 cents property by adverse possession vis-a-vis his vendor K.G.Naidu and all those who claim through him. He also disputed the title of Yamuna Devi. This suit is contested by the defendant.

2. While so, the plaintiff has taken out I.A.No.4 of 2020 for seeking the leave of the Court to withdraw the suit with liberty to file a fresh suit. It is his interest to file a fresh suit on the same cause of action that has become the bone of contention before the trial Court, and in the end the trial court refused leave to the plaintiff to bring out a fresh suit.

3.Mr.S.R.Raghunathan, the learned counsel appearing for the revision petitioner/plaintiff would contend that at the time when the suit was laid the dictum in ***Gurudwara Sahib Vs. Gram Panchayat Village*** [(2014) 1 SCC 669] governed the area, as per which, the suit for declaration of title based on adverse possession was considered impermissible. Hence, even though there was a pleading in the plaint, he could not ask for a declaration of title based on adverse possession due to the ratio in ***Gurudwara Sahib*** case. However,



C.R.P(PD)No.892 of 2021

this Judgement was overruled Vide Judgement of a larger Bench of the Hon'ble Supreme Court in ***Ravinder Kaur Grewal and others Vs. Manjit Kaur and others*** [(2019) 8 SCC 729], which restored the earlier view that a suit for declaration of title based on adverse possession is maintainable. Secondly, if the plaintiff has to seek a remedy for declaration based on the aforesaid pleadings, he necessarily have to implead the plaintiffs' vendor and possibly all those who may be there to assert a title through K.G.Naidu. It is hence, the plaintiff has preferred this Application in I.A.No.4 of 2020.

4.The learned counsel for the respondent/defendants would contend that the plaintiff knows only too well that seeking an amendment for declaration would well invoke a bar of limitation. In deed, the plaintiff knew or at least ought to have known that the sale deed in favour of the defendant dated 27.10.2010 creates a cloud on his title and he could not attack the sale deed even earlier in terms of the ratio in ***Anathula Sudhakar Vs. P.Buchi Reddy*** [(2008) 4 SCC 594]. Thirdly, seeking the leave of the Court for the grounds stated cannot construe a formal defect within the meaning of Order 23 Rule 1 CPCP and also Section 27 (a)(i) of the Court fees Act.



5. Responding to the same, the learned counsel for the revision petitioner submitted that an Application to withdraw a suit with leave to file fresh suit can be moved before the Court, not only when the suit is hit by some formal defects but, also when there are other sufficient grounds. The sufficient grounds in the instant case is created by the judgement of the Hon'ble Supreme Court in ***Ravinder Kaur Grewal and others Vs. Manjit Kaur and others*** [(2019) 8 SCC 729].

6. The rival submissions are carefully weighed. The plaintiff has laid a suit for bare injunction, which he now proposes to withdraw with liberty to file a fresh suit for declaration of title, solely on the ground that the law as declared by the Hon'ble Supreme Court at the time when the suit was different from the one the Supreme Court has given later, and that the later decision of the Hon'ble Supreme Court removed the fetters imposed on a plaintiff to rest a cause of action on adverse possession.

7. Stricto sensu, the cause of action for a suit for bare injunction and for declaration of title may not be the same, for in the former class of suit, court is keen to ascertain the lawfulness of plaintiff's possession of the suit property, whereas in a suit for declaration the Court focuses on ascertaining



the subsisting right of the plaintiff over the suit property. And, a plea of adverse possession is one of the pleas that enables a plaintiff to have his title declared. Therefore, a suit for declaration stands on a different footing from a suit for bare injunction to protect a plaintiff's possession of a property.

8. Turning to the present case, change of law as declared by the Hon'ble Supreme Court during the pendency of a suit cannot be ignored and impacts every pending case in a certain way, unless the Hon'ble Supreme Court declares that its decision overruling its earlier judgement will have effect only prospectively. Inasmuch as the Hon'ble Supreme Court authority in ***Ravinder Kaur Grewal and others Vs. Manjit Kaur and others*** [(2019) 8 SCC 729] merely declared the law without reference to the time, it will have an impact over the right which the plaintiff now wants to establish. This cannot be prevented. The defendants' contention is that a suit for declaration of title on a plea of adverse possession would be barred by limitation. However, this is a mixed question of law and fact, and cannot be presumed for the present. Indeed, even a plea of adverse possession is rooted in law of limitation.



C.R.P(PD)No.892 of 2021

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9 In conclusion, this revision is allowed, and order of the learned District Munsif, Coonoor in I.A.4 of 2020 in O.S.No.32 of 2015 dated 11.02.2021 made is set aside. No costs. Consequently, the miscellaneous petition is closed.

27.05.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking orders

To:
The Judge
District Munsif Court,
Coonoor.



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C.R.P(PD)No.892 of 2021

N.SESHASAYEE.J.,

ds

Pre-delivery order
in C.R.P(PD)No.892 of 2021

27.05.2022