



C.R.P(PD)No.1850 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>01.03.2022</i>
<i>Pronounced on</i>	<i>08.03.2022</i>

Coram

The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

**C.R.P(PD)No.1850 of 2016
and C.M.P.No.9713 of 2016**

Khader Khan

...Petitioner

Versus

1.Anwar Batcha
2.M.Mumthaj

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and decree dated 26.04.2016 passed in I.A.No.179 of 2014 in O.S.No.89 of 2010 by the District Munsif, Palladam.

For Petitioner : Mr.R.Agilesh
for Mr.R.Sankarappan
and Mr.R.Mahesan

For Respondents : No Appearance



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ORDER

This Civil Revision Petition has been filed by the petitioner challenging the order passed by the learned District Munsif, Palladam in I.A.No.179 of 2014 in O.S.No.89 of 2010 dated 26.04.2016, dismissing the Interlocutory Application filed by him.

2. Heard the learned counsel for the petitioner and perused the materials placed before this Court. None appeared on behalf of the respondents.

3. The plaintiff in the suit is the petitioner herein. The petitioner/plaintiff has filed the suit in O.S.No.89 of 2010 before the District Munsif Court, Palladam, for the following reliefs:

(a) Permanent injunction restraining the defendants 1 & 2 and their men, servants, agents, from in any way and any manner, interfering with the peaceful possession and enjoyment and attempting to trespass into the suit property and cause disturbance to the plaintiff's possession and enjoyment of the suit property and not to evict the plaintiff except under due process of law.



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(b) Permanent injunction restraining the defendants No.1 and his men, servant, agent, from in any way and any manner, alienating, encumbering, transferring, conveying the suit property either to the Defendant No.2 or to any third parties.”

3.1. The respondents/defendants have filed their written statement on 29.09.2010, denying the averments made by the petitioner/plaintiff in the plaint.

3.2. While the aforesaid suit is pending, the petitioner/plaintiff has filed an Interlocutory Application in I.A.No.179 of 2014 under Order VI Rule 17 of C.P.C, seeking to amend the plaint. In the plaint, it has been stated that the petitioner/plaintiff has chosen the first respondent/defendant No.1 as a purchaser to purchase the suit property and as such, on 29.08.1979, the legal heirs of one late Mrs.Julika Beebi had executed the Sale Deed in favour of the first respondent/defendant No.1. The said Sale Deed was registered as Document No.1200 of 1979 on the file of the Sub Registrar Office, Palladam. On the very same day, the first respondent/defendant No.1 has agreed to sell the suit property in favour of



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the petitioner/plaintiff and as such, on 29.08.1979, the petitioner/plaintiff and the first respondent/defendant No.1 had entered into a Sale Agreement and the same was registered as Document No.1201 of 1979 on the file of the Sub Registrar Office, Palladam.

3.3. In the Sale Agreement dated 29.08.1979, it is recited that the Sale Price was fixed as Rs.8,400/- and the same has to be paid by the petitioner/plaintiff on or before 29.08.1982 to the first respondent/defendant No.1. The petitioner/plaintiff has also paid the amount of Rs.8,400/- and requested the first respondent/defendant No.1 to execute the Sale Deed in his favour. Despite receiving the said amount from the petitioner/plaintiff, the first respondent/defendant No.1 failed to execute the Sale Deed in favour of the petitioner/plaintiff. Even before the sale, the petitioner/plaintiff is in possession and enjoyment of the suit property along with his mother. Still the petitioner/plaintiff is continuously in exclusive possession and enjoyment of the suit property even after the demise of his mother for the past five decades. While so, the first respondent/defendant No.1 attempted to dispose of the property hurriedly and entered into a Sale



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Agreement with the second respondent/defendant No.2. The said Sale

Agreement was registered as Document No.5244 of 2009 dated 23.04.2009.

3.4. In the affidavit filed in support of I.A.No.179 of 2014, the petitioner/plaintiff has stated that the suit was filed for permanent injunction against the defendants. He further stated that his previous counsel by oversight mistake has wrongly added the following words in Prayer No.(a) as '*and not to evict the plaintiff except under due process of law*'. Hence, the petitioner/plaintiff has filed I.A.No.179 of 2014 to delete the above words in Prayer No.(a). Since the petitioner/plaintiff is an absolute owner of the suit property by virtue of adverse possession, he is seeking the relief of declaration and add another new prayer in the plaint.

3.5. The petitioner/plaintiff has filed I.A.No.179 of 2014, seeking to amend the original plaint by inserting a new paragraph viz., Prayer No.(e-1) after Prayer No.(e). The said Prayer No.(e-1) reads as follows:

“(e-1) The plaintiff further submits that he has become owner of the suit property by adverse possession and he is in possession and enjoyment of suit property from 29.08.1979 without any



disturbance of the first defendant and he is in possession of the land lawfully under the sale agreement dated 29.08.1979 and he continued to remain in possession till the date. The first defendant has never been in possession and enjoyment of the suit property and he has never objected the uninterrupted possession and enjoyment over the suit property. Therefore, the plaintiff asserted his possession hostile to the knowledge of first defendant for more than statutory period, thereby perfected his title by adverse possession. The electricity service still stands in the name of the plaintiff's father and same was clearly proves plaintiff's peaceful possession and enjoyment of suit property."

4. The petitioner/plaintiff has filed the aforesaid application only after an inordinate delay of four years, however, no reason was adduced by him for the said delay. The suit is of the year 2010 and it was already taken for trial and an *ex-parte* decree was also passed against the respondents/defendants. Then, the respondents/defendants filed a petition to set aside the said *ex-parte* decree and the same was allowed by the trial Court. Thereafter, the petitioner/plaintiff has filed the aforesaid application to amend the plaint. If the I.A.No.179 of 2014 filed by the petitioner/plaintiff is allowed, then the nature and character of the suit itself



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will change. Moreover, the petitioner/plaintiff initially filed the suit for permanent injunction, but, now, he is seeking the prayer of declaration by way of filing the amendment application and therefore, the same is barred by limitation. The respondents/defendants have filed their written statement in the year 2010 itself and thereafter, on 02.12.2012, they have filed a case in R.C.O.P.No.1 of 2012 under the Rent Control Act against the revision petitioner and the same is pending.

5. The petitioner/plaintiff was fully aware of the facts of the case, however, he filed the aforesaid application for amendment after a delay of four years. In the event of allowing the said application, the nature and character of the suit will change and also, it will lead way to a new suit. According to the respondents/defendants' counter statement filed in the above I.A.No.179 of 2014, the revision petitioner/plaintiff is only a tenant and not a owner of the suit property and that is why, the petitioner/plaintiff has added the following words in Prayer No.(a) of the plaint, '*not to evict the plaintiff except under due process of law*'. Furthermore, the petitioner/plaintiff was not paying the rent properly and therefore, in order



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to evict him from the suit property, a case in R.C.O.P.No.1 of 2012 was filed by the respondents/defendants under the Rent Control Act. Hence, I.A.No.179 of 2014 filed by the petitioner/plaintiff is not sustainable and the same is untenable in law.

6. It is clear and evident that the petitioner/plaintiff is not an absolute owner of the suit property and according to the respondents/defendants, the petitioner/plaintiff is only a tenant and also, only the Sale Agreement has been entered between the respondents/defendants and the petitioner/plaintiff and no Sale Deed has been executed till date. So, as on record, the respondents/defendants are the owners of the suit schedule property, however, the petitioner/plaintiff claims the ownership of the property by way of adverse possession and he has not mentioned in the plaint that he is a tenant of the suit schedule property. It is pertinent to note that though the petitioner/plaintiff is very well aware about the facts of the case as well as the suit schedule property, he has not adduced any sufficient or valid reason for an inordinate delay of four years in filing the application for amendment.



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7. The learned counsel for the petitioner/plaintiff has relied on the judgement passed by this Court in the case of ***Kedia Overseas Limited and Anr. Vs. Satellite Town Development Pvt. Ltd., and Ors.*** reported in **2010 (2) CTC 609**. The relevant portion of the said judgement is extracted hereinbelow:

“29. This Court taking into consideration the ratio laid down in the above cited decisions and the facts of this case as available through pleadings and the averments made in the Application and the counter affidavit, is of the considered opinion that the amendment of Plaint sought for by the appellants herein in no way altered the nature and character of the Suit. The issue with regard to the belatedness on the part of the appellants/plaintiffs to take out the above said Application and lack of bona fide on their part are disputed questions of fact which can be thrashed out only during the course of trial. This Court is also of the view that no prejudice will be caused to the respondent/defendants in the event of amendment being allowed.”

8. But the decision taken by this Court in the aforesaid judgement is not applicable to the case on hand for the reason that in the judgement cited *supra*, the amendment was sought before the commencement of trial and the suit was filed originally for bare injunction restraining the defendants from



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dealing with the plaint schedule property and subsequently, for relief of specific performance sought by way of amendment. But, in the present case, the amendment application has been filed only after a delay of four years that too after the commencement of trial and passing of *ex-parte* decree which was subsequently set aside by the trial Court.

9. The learned District Munsif, Palladam has rightly dismissed the application filed by the petitioner/plaintiff, for amending the plaint. I do not find any ground to interfere with the order passed by the learned District Munsif, Palladam.

10. In the result, this Civil Revision Petition is dismissed and the order passed by the learned District Munsif, Palladam in I.A.No.179 of 2014 in O.S.No.89 of 2010 dated 26.04.2016 is hereby confirmed. No Costs. Consequently, connected Miscellaneous Petition is closed.

08.03.2022

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

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To

The District Munsif,
Palladam.



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J.SATHYA NARAYANA PRASAD, J.

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Pre-Delivery order
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