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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Original Side Appeal No. 122 of 2022

and

C.M.P. No. 8103 of 2022

G. Sampath

.. Appellant

Versus

Dr. S. Selvi

.. Respondent

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 16.02.2022 passed by the learned Judge in Application No. 3662 of 2021 in Civil Suit No. 547 of 2019.

For Appellant : Mr. V.K. Rajagopalan

For Respondent : Ms. T.G. Niranjana
for M/s. Surana and Surana

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J)

This intra-court appeal is filed by the defendant as against the order dated 16.02.2022 passed by the learned Judge in Application No. 3662 of 2021 in Civil Suit No. 547 of 2019.



2. The respondent herein has filed the aforesaid suit in Civil Suit No. 547 of 2019 praying to pass a preliminary decree for partition of the suit A, B, C and D schedule properties by dividing them into 4 shares and allot 3 such shares to the plaintiff and to grant permanent injunction restraining the defendant from alienating or encumbering the suit schedule properties in any manner to any third party or creating any third party interest in respect of the suit schedule properties.

3. Pending suit, the appellant / defendant has filed an Application in A.No. 3662 of 2021 in C.S. No. 547 of 2019 praying to include Schedule 'E' property, after Schedule 'D' property in page No.13 of the plaint as set out in the judges summons of the application.

4. However, the learned Judge refused to entertain the aforesaid application and accordingly, dismissed the same, by the order dated 16.02.2022, which is challenged in this appeal at the instance of the appellant / defendant.

5. Before proceeding further, it may be relevant to set out the plaint averments in brief, for effective adjudication of this appeal and the same are as

follows:

<https://www.mhc.tn.gov.in/judis>



(i) The respondent/plaintiff is none other than the wife of the appellant / defendant. The marriage between the parties was solemnised on 24.05.1991 at K.S.R. Kalyana Mandapam, Koyambedu, Chennai as per the Hindu rites and customs. Out of such wedlock, they were blessed with a son by name G.S.Krishnakumar, in the year 1992 and a female child by name G.S.Pavithra, in the year 1994.

(ii) According to the respondent/plaintiff, the appellant / defendant started his profession as an advocate, however, he could not sufficiently earn out of it. In the year 1991, it was decided to purchase a house site at Balasubramaniyan Koil Street, Arakkonam and the parents of the respondent agreed to extend financial assistance not only for purchase of the land, but also to construct a house thereon. Accordingly, the parents of the respondent contributed 75% of the land cost, while the balance was mobilised by the appellant and the land was purchased in the name of the appellant through a sale deed dated 31.08.1991 registered as document No. 929 of 1991.

(iii) It was further stated by the respondent / plaintiff that in the year 1994, she joined as Lecturer in Sri Krishna Engineering College, Kancheepuram. From and out of her salary amount and with the contribution made by her parents, she constructed two floors in the land purchased at Arakkonam and they started residing there, even though the respondent has to



go to Kancheepuram for her work. Subsequently, the respondent got appointed as Lecturer in St. Peter's Engineering College, Avadi and with her salary amount, she purchased a land at Santhosh Nagar, Ayyambakkam (Annanoor) during the year 1997 for which the appellant did not contribute anything. Later, the respondent got appointed as Lecturer in Vellore Institute of Technology with a basic salary of Rs.13,003/- per month. For the purpose of her employment, the parties shifted their residence to Katpadi in the year 2000. The respondent financially assisted the appellant to set up his advocate office so as to enable him to extend his area of practice. Thereafter, for the purpose of education of the two children, the parties shifted their house to Chennai.

(iv) The plaint also proceeds to state that the respondent got appointed as Lecturer in R.M.K. Engineering College at Gummudipoondi in the year 2001 with enhanced salary. The appellant also started practicing in the Courts at Chennai. Initially, the parties resided in a rented house at Chennai and in the year 2002, they moved the parents house of the respondent at Anna Nagar. While so, during the year 2006, matrimonial differences cropped between the parties due to trivial reasons. In view of the same, the respondent went back to Arakkonam and lived there separately. Later, the appellant also joined her and pretended as if he is affectionate towards her and assured that he will not indulge in any quarrel. Thereafter, in the year 2011, the respondent purchased



the suit 'B' Schedule property for Rs.37 lakhs through a registered sale deed dated 02.05.2011 in the name of the appellant from and out of her savings by contributing 75% of the sale consideration. In similar fashion, the suit 'C' and 'D' Schedule properties were purchased in the name of the appellant by contributing 75% of the sale consideration from and out of the respondent's savings. However, from the year 2016, due to matrimonial dispute, the respondent was staying in her parents' house at Anna Nagar. Since the children have grown and the respondent has to perform their marriage and to set apart some immovable properties to them for their benefits, from 10.06.2017 onwards, the respondent has been calling upon the appellant to come and live with them jointly, but he refused to come back. It was also learnt that the appellant is having illicit intimacy with an another woman, besides attempting to alienate and encumber the properties set out in the suit A, B, C and D schedule properties. Therefore, the respondent has filed the aforesaid suit for partition and permanent injunction.

6. On notice, the appellant / defendant filed a written statement repudiating the plaint averments. It was his specific case that the respondent / plaintiff has no right to claim 3/4th share in the suit A, B, C and D schedule properties. If the respondent wants money to maintain herself and children, it is



very well open to her to file application for maintenance. Therefore, the suit filed by the respondent for partition is not maintainable. It was further stated in the written statement that the properties mentioned in the suit schedule have been purchased by the appellant out of his self-acquired funds and that the averment made in the plaint that the respondent contributed 75% of the amount for purchasing those properties, is untenable. The appellant also refuted the plaint averment that the parents of the respondent extended financial assistance for purchasing the immovable properties as utter false. With these averments, the appellant prayed for dismissal of the suit.

7. After filing his written statement, the appellant has taken out the instant application viz., A. No. 3662 of 2021 seeking amendment of plaint by including 'E' schedule property, by stating that the property standing in his name in Survey No.426 measuring 1920 square feet in Ammanur Village, Arakonam Taluk, purchased through a sale deed dated 30.03.1990 registered as document No. 460 of 1990 was omitted to be included as one of the suit schedule properties. This property, according to the appellant ought to have been included in the suit schedule as item No. E, to avoid further litigation. In the event of the same being included in the suit schedule properties, no prejudice will be caused to the respondent.



8. Opposing the application, the respondent/plaintiff has filed a counter affidavit stating that the appellant/defendant is not entitled to file the application under Order VI Rule 17 of CPC for amendment of the pleadings in the plaint. An amendment, if necessary, has to be made at the instance of the plaintiff in the suit and not on the basis of an application of the defendant. It was further stated that in the written statement, the defendant has not raised any pleadings with respect to the non-inclusion of the property at Survey No.426 measuring 1920 square feet in Ammanur Village, Arakonam Taluk. While so, in the absence of any such pleadings, the application for incorporating the said property as suit 'E' Schedule property, is not maintainable. The respondent also stated that she was not aware of the property said to have been purchased in the name of the appellant on 30.03.1990. In any event, the defendant in the suit can only be permitted to file written statement and at his instance, the pleadings in the suit cannot be modified, added or deleted. Stating so, the respondent prayed for dismissal of the application.

9. Upon hearing the rival submissions, the learned Judge, by the order impugned herein, dismissed the aforesaid application seeking amendment of the suit schedule properties on the ground that the appellant has not raised any pleadings in his written statement regarding non-inclusion of 'E' schedule



property. Aggrieved by the same, the defendant is before this court with the present appeal.

10. The learned counsel for the appellant / defendant submitted that there was an omission on the part of the respondent/plaintiff to include a property at Ammanur Village, Arakonam Taluk, as one of the suit schedule properties and therefore, the appellant was constrained to file the application to amend the plaint by including the said property as item No.E in the suit schedule properties. If the said application is allowed, it would enable the Court to effectively adjudicate the issues involved in the suit. On the other hand, the learned Judge dismissed the application on the ground that there was no pleadings to that effect in the written statement and in the absence of any pleadings, the amendment of the plaint by including the 'E' Schedule property cannot be countenanced. The learned counsel further submitted that when four properties standing in the name of the appellant were already included as suit schedule properties, the respondent ought to have included the E Schedule property as well. In the event of including the 'E' Schedule property in the suit schedule, no prejudice will be caused to the respondent. However, the learned Judge erred in dismissing the application, by the order impugned herein. Therefore, the learned counsel prayed for allowing this appeal by setting aside the order passed by the learned Judge.



11. On the contrary, the learned counsel for the respondent / plaintiff submitted that at the instance of the defendant, the plaint averments cannot be amended and hence, the learned Judge has rightly dismissed the application filed by the appellant for amendment under Order VI Rule 17 of CPC. Adding further, the learned counsel submitted that if any amendment is required to be carried out in the plaint, it is for the plaintiff to do so. The plaintiff will succeed or fail on the basis of her own pleadings. It is also submitted that the appellant has not raised any pleadings in his written statement about non-inclusion of 'E' schedule property as one of the suit properties, and hence, the present application seeking amendment of the plaint is only to protract the proceedings. Thus, according to the learned counsel, the learned Judge is wholly justified in dismissing the application for amendment, which do not require any interference by this court.

12. We have heard the learned counsel appearing for both sides and also perused the materials placed before us.

13. The facts remain undisputed are that the respondent / plaintiff has filed the suit for partition and permanent injunction in respect of the four properties described as A, B, C and D in the schedule. The averments made in the plaint have been refuted by the appellant / defendant by filing written



statement. Thereafter, he has preferred the application under Order VI Rule 17 of CPC, seeking amendment of the plaint, by including the property at Ammanur Village, Arakonam Taluk in S.No.426, as 'E' schedule, by stating that the respondent has omitted to include the said property as one of the suit schedule properties and hence, the same has to be included for effective adjudication of the suit; and that, in the event of the said property being included in the suit schedule, no prejudice will be caused to the respondent. However, the learned Judge dismissed the said application, after having pointed out that originally, the appellant has not stated anything about the said property in anywhere in his written statement and therefore, he cannot take a different stand and file this application, by the order impugned herein.

14. The position of law is that under Order VI Rule 17 of CPC, the court may, at any stage of the proceedings, allow either party to amend his pleadings and all such amendments shall be made as may be necessary for the purposes of determining the real questions in controversy between the parties. In a suit for partition, all the parties, who have a share in the properties to be partitioned, would be in the position of plaintiffs and can take all the pleas, which a plaintiff can take, and so, the written statement also, would be in the nature of plaint. If the defendant felt that certain properties are omitted to be included in the plaint, for effective adjudication of the suit, he should have



mentioned the same in his written statement. If he had not done so, he should have sought leave of the court to amend his written statement. Therefore, the question of the defendant seeking leave to amend the plaint by inclusion of certain properties in the suit schedule, does not arise, as the plaint contains the case of the plaintiff but not that of the defendant.

15. Admittedly, in the present case, the appellant has not mentioned anything in his written statement originally filed, about the non-inclusion of the property, which was sought to be included as suit 'E' schedule property by filing the application under Order VI Rule 17 of CPC. The said application was dismissed by the learned Judge. We are of the view that the plaintiff is the architect of the plaint and he / she builds it word by word to establish his / her case; and based on the same, the plaintiff has to succeed or fail. Therefore, it is the plaintiff, who is the author of the pleadings made in the plaint, to alter/modify, add or delete anything in the plaint with the permission of the court; and the defendant has no right to make alteration / modification of the pleadings raised in the plaint by the plaintiff. Even assuming that the plaintiff has omitted to include or exclude anything, the defendant can at the best point it out, by filing written statement or at the time of trial. As such, the appellant herein, who originally failed to mention in his written statement about non-



inclusion of the said property, cannot be permitted to include the same as suit 'E' schedule property by filing separate application seeking amendment of the plaint filed by the respondent. Accordingly, the learned Judge was justified in dismissing the amendment application filed by the appellant. We do not find any reason to interfere with the order of the learned Judge.

16. Resultantly, this original side appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
05.03.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.



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R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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