



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.07.2024

Pronounced on: 12.07.2024

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A.No.257 of 2024

& A.No.5701 of 2022

in

C.S.No.291 of 2006

P.B.BALAJI, J.

The Applications in A.No.257 of 2024 & A. No.5701 of 2022 have been filed to amend the plaint in C.S. No.291 of 2006.

2. I have heard Mr.T.Dhanasekaran, learned counsel for the Applicant and Mr.K.Chandrasekaran, learned counsel for the contesting 1st respondent.

3. The suit is one for specific performance of an agreement of sale dated 15.07.2004. Pending the suit, an Application in A.No.2539 of 2019 was filed seeking to transpose the 1st plaintiff as 2nd defendant in the suit. In and by an order dated 22.12.2021, this Court allowed the said Application and directed necessary amendment to be carried out in the plaint. It appears that an Application No.5701 of 2022 was filed seeking permission to carry out the necessary amendments pursuant to the transposition Application being ordered. The said application was initially not opposed and therefore



this Court ordered the Application. However, the 1st respondent noticed that certain amendments which were not permitted by this Court or not even sought for, had been included in the said Application No.5701 of 2022 and it was brought to the notice of the plaintiff and the plaintiff took out Application No.257 of 2024 wherein, he seeks to amend the plaint by including a prayer for declaration of the cancellation deed dated 14.04.2013 as well as the power attorney dated 13.09.2005 as null and void and also consequently amend the memo of valuation and Court fee column in the plaint.

4. These Applications are now resisted by the contesting 1st respondent, the 1st defendant in the suit.

5. The learned counsel for the Applicant would submit that Application No.257 of 2024 was filed only since the amendments were made pursuant to the orders passed in A.No.5701 of 2022 which was subsequently recalled and there was no wilful or wanton mischief played by the plaintiff in including the new prayer. He would therefore pray for the Applications being ordered.



6. Per contra, the learned counsel for the 1st respondent would submit that when the earlier Application for amendment, that is A.No.5701 of 2022 was allowed, that too, the 1st respondent not objecting to the same as it was only consequential amendment pursuant to the 1st plaintiff being transposed as the 2nd defendant, without taking the permission of this Court or seeking necessary relief in that regard, the plaintiff has included an additional prayer in the suit which was not served on the counsel for the 1st respondent vide the affidavit and Judge's Summons in Application No.5701 of 2022.

7. The learned counsel would further submit that the parties have already led evidence before the learned Additional Master and took me through various orders passed by this Court to contend that even as early as on 29.01.2020, this Court had taken note of the fact that the evidence was completed even on 04.11.2019 and subsequently the suit was posted for arguments on 23.01.2020. Even in and by the order dated 29.01.2020, the suit was only adjourned to 06.02.2020 observing that the learned counsel for the 1st defendant was ready to argue the matter. He would also submit that though the order in Application No.2539 of 2019, transposing the 1st plaintiff as 2nd defendant was challenged by way of OSA.No.196 of 2022,



the said OSA was withdrawn on 18.08.2023.

8. The learned counsel for the 1st respondent would also place reliance on the following decisions:

Kapilaben & Others vs. Ashok Kumar Jayantilal Sheth Thr. POA Gopalbhai Madhusudan Patel & Ors, reported in, **2020 SAR (Civ) 237** where the Hon'ble Supreme Court has dealt with assignment of an agreement of sale and in ***Basavaraj vs Indira & Ors***, reported in, **2024 (3) SCC 705**, where the Hon'ble Supreme Court has dealt with the relevant factors to be considered while allowing or refusing amendment of the plaint.

9. The learned counsel for the 1st respondent would therefore seek for dismissal of the Applications.

10. I have carefully considered the rival submissions advanced by the learned counsel on either side and also perused the decisions relied on by the learned counsel for the 1st respondent.

11. I would first take up the Application No.5701 of 2022. This is an



Application, filed only for carrying out consequential amendments pursuant to the transposition petition being ordered by this Court. In and by the said

Application, what is sought to be amended is only Paragraph 16 at pages 5 & 6, where the 1st plaintiff being transposed as 2nd defendant is sought to be reflected and at page 7, prayer a), where defendant is qualified as 1st defendant similarly in prayers b) and c) as well, defendant is sought to be qualified as 1st defendant in view of the transposition of the 1st plaintiff as the 2nd defendant. There is no prayer originally sought for in the Application seeking to introduce any new relief. As long as the amendments are limited to the consequences of Application No.2539 of 2019 being allowed by this Court on 22.12.2021, there is no difficulty in ordering amendment. Therefore, rightly, the 1st respondent did not even object to the Application being allowed at the first instance. It was only after noticing that under the guise of the amendments being carried out as a consequence to the transposition Application being ordered, totally new amendments which were not even sought for were incorporated and that is the reason why this Court was also constrained to recall the order passed, viz., allowing the Application No.5701 of 2022. I am also able to see from the affidavit as well as Judge's Summons to Application No.5701 of 2022 that no new relief was



sought for. However, when a clean copy of the same has been filed, the Judge's Summons included a new prayer for declaration sought to be included. This is clearly impermissible. However in view of the fact that the said error/defect is sought to be rectified by filing an Application No.257 of 2024, I am dealing with the said Application next.

12. In the affidavit in support of Application No.257 of 2024, the applicant submits that initially an ex-parte decree was granted on 08.09.2009 and the same was set aside at the instance of the 1st defendant. Thereafter, the parties also went for trial and since the defendants 1 and 2 (transposed as 2nd defendant) colluded between themselves fraudulently and defeated the plaintiff's right, necessity has arisen for seeking the additional reliefs of declaration regarding the cancellation of sale agreement and power of attorney.

13. It is an admitted fact that the evidence of DW1 was completed on 04.11.2019 and the matter was posted for arguments. Exhibits D1 to D3 were marked on 04.11.2019 in the presence of the learned counsel for the plaintiff which is evident from the order passed by the learned Additional



Master. Therefore, even assuming that the plaintiff was not aware of the cancellation of the sale agreement and power of attorney at any earlier point of time, he cannot feign ignorance of the fact that the said documents were cancelled as the same was brought to his notice at least on 04.11.2019.

14. The question of limitation is also to be considered while taking up an amendment Application. As laid by the Hon'ble Supreme Court in **Basavaraj's** case (referred herein supra), when the party seeking amendment was aware of the document, he cannot even plead oversight and seek for amendment of the pleadings at the fag end of the trial. The Hon'ble Supreme Court has further held that when an Application for amendment of plaint has been filed beyond the period of limitation, even if the amendment was permitted, the relief sought for by way of amendment would be time barred and therefore the Hon'ble Supreme Court declined the request for amendment.

15. One another relevant circumstances is that the amendment is sought for after commencement of trial. The proviso to Order 6 Rule 17 of Civil Procedure Code, 1908 provides that no Application for amendment



shall be permitted after trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the issue before the commencement of trial. In this regard there is not even a pleading in the Application for amendment, that despite due diligence the new relief prayed for by way of amendment could not be sought for before trial.

16.Further, admittedly the suit is ripe for arguments and at this stage the applicant wants to amend the plaint by seeking reliefs, declaring the cancellation of agreement of sale and power of attorney as null and void. The said cancellation of agreement of sale as well as the power of attorney were marked before the learned Master in the presence of the learned counsel for the plaintiff as early as on 04.11.2019. The present Application No.257 of 2024 has been filed only on 20.12.2023. Such relief for or suit declaration has to be sought/filed within a period of 3 years from the date on which the right to sue accrues. Even assuming for a moment that the plaintiff was not aware of the said cancellation of the agreement of sale and power of attorney, at least on 04.11.2019, it was brought to his notice and therefore the amendment ought to have been filed on or before 03.11.2022.



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Admittedly, the said Application has not been filed within even the extended 3 years period, even if the benefit of date of knowledge can be given to the plaintiff. As held by the Hon'ble Supreme Court in **Basavaraj's** case (referred herein supra) when the amendment is sought for at the fag end of trial and the facts were within the knowledge of the Applicant seeking amendment and the same having not been sought for within the specified period of limitation, there is no useful purpose in permitting amendment, when such relief is time barred. Therefore applying the ratio laid down by the Hon'ble Supreme Court to the facts of the present facts, I am satisfied that the Application for amendment does not merit consideration. Accordingly, A.No.257 of 2024 is liable to be dismissed.

17. However, there are certain consequential prayers viz., b) and c) in and by which, the amendment is sought for to substitute the word, the '2nd plaintiff' as 'plaintiff' in the cause title and the rest of the plaint wherever it is found in pursuance of the order dated 22.12.2021 in A.No.2539 of 2019 and substitute the word 'plaintiff' in the place of the 'plaintiffs' in the cause title and the rest of plaint wherever it is found in pursuance of the order dated A.No.2539 of 2019. These prayers have to be entertained since they



are only consequential to the order dated 22.12.2021 transposing the first plaintiff as the 2nd defendant. In such view of the matter, A.No.257 of 2024 is being partly allowed, limited to the prayers b) and c) morefully set out in the Judge's Summons and A. No.5701 of 2022 is allowed (as originally sought for in the Judge's Summons and not in the terms of the clean copy).

12.07.2024

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P.B.BALAJI,J.



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**Pre-delivery Order in
A.No.257 of 2024
& A.No.5701 of 2022
in
C.S.No.291 of 2006**

12.07.2024