



C.R.P(MD)No.530 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2024

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.530 of 2020

and

C.M.P(MD)No.3367 of 2020

P.Velmurugan

... Petitioner/Petitioner/
Plaintiff

Vs.

1.S.Karthick

2.Yasudass

3.The Idol of Arulmighu Thayumanaswamy,
Represented by its Assistant Commissioner/
Executive Officer,
Rockfort,
Tiruchirapalli-2.

... Respondents/Respondents/
Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 02.01.2020 made in I.A.No.190A of 2018 in O.S.No.506 of 2014 on the file of First Additional District Munsif, Tiruchirappalli.



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For Petitioner : Mr.P.Thiyagarajan
For R2 : No Appearance
For R3 : Mr.V.Chandrasekar

ORDER

This civil revision petition came to be filed assailing the order passed by the First Additional District Munsif Court, Tiruchirappali in I.A.No.190A of 2018 in O.S.No.506 of 2014, dated 02.01.2020.

2. For the sake of convenience, the parties herein are referred as per the rank in original suit.

3. The suit in O.S.No.506 of 2014 was one for bare injunction. An interlocutory application in I.A.No.190A of 2018 came to be filed seeking to amend the plaint, including the relief as one for declaration of plaint schedule property and consequential relief of recovery of possession of suit property and declaration of decree and judgment passed in O.S.No.705 of 2009, dated 10.11.2010 on the file of the Principal District Munsif, Tiruchirappalli. The said interlocutory application was a pre-trial application. The suit property consist of an



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area of 65 cents comprised in Old Survey No.94/1, New Survey No. 94/5G of Ellakudi Village, Thiruverumbur Taluk, Tiruchirappalli District. According to the plaintiff's case, the suit property originally belonged to the family of Naganatha Gurukkal, Sesha Gurukkal and Sathasiva Gurukkal. A registered partition deed bearing document no. 3407/1921 came to be executed by way of the aforesaid 3 brothers on 23.08.1921, in which One Acre 70 cents land in Old Survey No.94/1 of Ellakudi village came to be allotted together in favour of Sesha Gurukkal and Sathasiva Gurukkal. Thereafter, by means of a registered partition deed bearing Document No.214/1955, the said Sesha Gurukkal and Sathasiva Gurukkal effected partition on 17.01.1955, in which 1.70 Acres in Old Survey No.94/1 of Ellakudi village came to be allotted in favour of Sesha Gurukkal. On 30.11.1982, the said Sesha Gurukkal had passed away. He was survived by his sole daughter Dhanam Pichai Ammal. She had a son named, Thirisara Greeson. The said Dhanam Pichai Ammal and Thirisara Greeson together executed a sale deed with respect to 60 cents to the plaint schedule property in favour of Ramalingam. The said Ramalingam, in turn, had executed a registered sale deed on 04.12.1991 in favour of one Yesudoss vide sale deed bearing Document No.3258/1991. The said Yesudoss executed a



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settlement deed in favour of his wife, namely, Regina Mary on 23.04.2007 bearing Document No.2924/2007. The said Regina Mary, in turn, had executed a sale deed in favour of the plaintiff herein on 15.11.2007 bearing document no.1371/2007. The Patta, Chitta and Adangal stand in the name of the plaintiff.

4. The plaintiff had effected mutation with respect to the plaint schedule property and has also regularly paying the land tax. The plaint schedule property is a cultivable land and the plaintiff's case is that while he was in exclusive possession, title and enjoyment over the same, on 18.04.2014, the 1st defendant in collusion with the 2nd defendant as well as the 3rd defendant Temple, attempted to interfere with the plaintiff's peaceful possession and enjoyment over the suit property. Hence, the suit came to be filed.

5. The claim of the plaintiff is that the 1st defendant has colluded with his vendor's husband and the officers of the Temple for the purpose of interfering with the peaceful possession and enjoyment of the suit property.



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6. The 2nd and 3rd defendants have filed the respective written statements. The 2nd defendant in Paragraph No.7 of his written statement has pleaded that he is not a necessary party to the suit and he has been roped into the litigation unnecessarily.

7. The 3rd defendant Temple in his written statement has submitted that the plaintiff is claiming title under a wrong person without title and that the suit property belonged to the 3rd defendant Temple. The same is a service inam land, especially for the performance of Kothanar services which came to be rendered by the descendants of Kulanthaivel Pillai, Shanmugam and his father Chellapan to the Temple. Those persons who performed Kothanar services had only right to enjoy the property as long as they performed the Kothanar services in the defendant Temple and they have no right to alienate the same. Further, it is contended in Paragraph No.4 of the written statement that one of the descendants of Kulanthaivel Pillai, Shanmugam and his father alienated the suit property in favour of one Yesudoss that is the predecessor in title of the plaintiff. Claiming the said sale in favour of Yesudoss as void, the written statement categorically pleads that the descendants of Kulanthaivel Pillai had no right to enjoy the property. It further states that the sale in favour



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of Yesudoss is void. Interestingly, in Paragraph No.5 of the written statement, the details of an earlier suit for recovery of possession that has been filed by the 3rd defendant Temple in O.S.No.705 of 2009 on the file of District Munsif Court, Tiruchirappalli has been elaborated, in which one Shanmugam s/o Chellapan, 43A South Street, Rock Fort, Tiruchirappalli and Yesudoss i.e., a predecessor in title of the plaintiff herein were impleaded as defendants. The 3rd defendant further elaborated in Paragraph No.5 of his written statement that the decree for possession was passed. The suit in O.S.No.705 of 2009 came to be decreed as prayed for in an *ex parte* judgment and decree, dated 10.11.2010. Thereafter, an execution petition in E.P.No.84 of 2011 for delivery was also filed by the 3rd defendant Temple which was also allowed *ex parte* on 07.06.2013 in the presence of police officials and revenue officials. Having known the entire details, the plaintiff suppressing all these facts has filed the present suit. It is also contended that the 3rd defendant Temple is in possession of the suit property exclusively from 07.06.2013 i.e., the date of delivery.

8. After filing of this written statement, dated 25.06.2015 by the 3rd defendant, the plaintiff has filed I.A.No.190A of 2018 which came to be



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dismissed by the learned trial Court on two grounds, namely (i) the plaintiff fail to state whether he had been a party to the original suit in O.S.No.705 of 2009 filed by the 3rd defendant Temple (ii) There is no cause of action for the said amendment, and if allowed, the same will change the nature of the suit itself. Assailing the same, this revision petition came to be filed.

9. The learned counsel for the revision petitioner / plaintiff submitted that the plaintiff was kept in dark about the previous suit which has been filed by the 3rd defendant i.e, O.S.No.705 of 2009 and categorically contended that the said suit came to be filed by the 3rd defendant Temple nearly after a period of 17 years from the date of sale deed in favour of his predecessor in title, namely Yesudoss. He further submit that if this chain of title is traced through the various documents, the name of the Temple will not be reflected in any of the documents, on the strength of which, the predecessor-in-title of the plaintiff, namely Yesudoss had sold the suit property in favour of the plaintiff. Only after the filing of the written statement by the 3rd defendant, the plaintiff had approached the authorities for getting certified copies of the documents mentioned in the written statement filed by the 3rd defendant, especially



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the judgment and decree of the learned trial Court in O.S.No.705 of 2009 and also the order passed by the Executing Court in E.P.No.84 of 2011.

Though the 3rd defendant has claimed that the delivery has been effected, the same is only a paper delivery. However, since there is an order of Executing Court, it has become necessary for the plaintiff to effect necessary amendment in the plaint so as to ensure his title and possession over the plaint schedule property. Hence, an amendment with respect to the title of declaration over the suit property, recovery of possession in view of the paper delivery effected by the Executing Court in E.P.No.84 of 2011 and declaration of the judgment and decree passed in O.S.No. 705 of 2009 by the learned trial Court as null and void, is necessitated. Hence, the interlocutory application came to be filed.

10. However, the Trial Court without application of mind, despite the petitioner / plaintiff having categorically pleaded the details of the fact the he was not at all a party to the suit in O.S.No.705 of 2009 and the said *ex parte* decree has been obtained by the 3rd defendant Temple behind the back of the plaintiff herein, the learned trial Court had proceeded to observe that the plaintiff had not stated whether he had been a party to O.S.No.705 of 2009. That apart, the other ground on the



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basis of which the learned Trial Court proceeded to dismiss was that, there had been no cause of action for effecting such an amendment in the plaint and that if the same is amended, that will change the nature of the suit itself and the same cannot be sustained for the reason that the amendment had become necessary only to avoid multiplicity of suit with respect to the title, possession and enjoyment of the plaint schedule property and on that basis, he pressed for allowing the revision petition by setting aside the order in I.A.No.190A of 2018.

11. Per contra, the learned counsel for the 3rd defendant Temple submitted that the suit for bare injunction was originally filed by the plaintiff as early as in the year 2014. However, interlocutory application seeking to amend the plaint came to be filed only on 2018, after a period of 4 years. That apart, negating the arguments of the learned counsel for the petitioner that the decree in earlier suit in O.S.No.705 of 2009 was obtained by the 3rd defendant Temple behind the back of the plaintiff, he categorically submitted that the vendor of the plaintiff was none other than the wife of Yesudoss, who had been the 2nd defendant in the said suit in O.S.No.705 of 2009 and hence, the plaintiff's claim that the judgment and decree in O.S.No.705 of 2009 had been obtained by the 3rd



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defendant Temple behind the back of the plaintiff has no substance.

When the predecessor in title of the plaintiff had suffered a decree, the plaintiff cannot close his eyes and claim that he is unaware of the earlier proceedings and seek for amendment in the later suit on the ground that he came to know of the facts in issue only after the filing of the written statement by the 3rd defendant Temple and on that basis, he pressed for dismissing the revision petition submitting that the finding of the trial Court in I.A.No.190A of 2018 need not be interfered with for the reason that obviously the amendment allowed, would change the nature of the suit.

12. The earlier suit was filed in the year 2009. However, after the said suit been allowed by the learned Trial Court and execution petition came to be filed in E.P.No.84 of 2011, delivery was effected with respect to the suit property on 07.06.2013. Only after the order of delivery in favour of the 3rd defendant Temple, the present suit has been filed by the plaintiff suppressing the fact. The present suit for bare injunction came to be filed by the plaintiff without being in possession of the suit property. He further added that, at the time of the suit, since the delivery of the suit property has been taken by the 3rd defendant Temple, proper auction was



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conducted for cultivation and the 1st defendant, namely Karthick is only a successful bidder for cultivation and having known the fact that the said Karthick has taken the possession over the suit property in the capacity of successful bidder, the plaintiff ought to have diligently filed the suit as claimed in the amendment petition at the first instance itself. Hence, the amendment petition is belatedly filed. On that basis, the finding of the Trial Court need not be interfered.

13. For which, the learned counsel for the petitioner submitted that the said fact has been duly pleaded by the plaintiff in his plaint itself by categorically pleading that the 1st defendant had colluded with his vendor's husband as well as the 3rd defendant Temple on the basis of certain created documents and since the plaintiff was unaware as to the nature of the documents at that point of time and since he was in possession of the property, suit for bare injunction came to be filed.

14. Heard the learned counsels on either side and perused the material records.



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15. Though the learned counsel for the 2nd respondent, namely K.S.Kathiravan and the name of 1st respondent is printed in the causelist, they did not turn up.

16. Heard the learned counsel for the petitioner and the learned counsel for the 3rd respondent Temple and carefully perused the material records available on record.

17. It is needless to state that I.A.No.190A of 2018 is a pre-trial application for amendment of plaint. The learned Trial Court had proceeded to dismiss the same filed by the plaintiff seeking to amend the plaint for the reason that, if the said application is allowed, it would change the nature of the suit. However, the claim of the plaintiff that he came to know of the earlier suit in O.S.No.705 of 2009 on the file of the District Munsif Court at Tiruchirappalli only after the 3rd defendant Temple had filed the written statement cannot be negated for the simple reason that the said suit came to be filed after the date of sale in his favour on 15.11.2007. Only after a period of 2 years from the date of sale deed in favour of the plaintiff, the earliest suit in O.S.No.705 of 2009 was filed as against the plaintiff's predecessor in title, namely one



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Yesudoss and one Shanmugam. Even according to the 3rd defendant's written statement in Paragraph No.4, a careful reading of the same would reveal that it was only the descendents of one Kulanthaivel, Shanmugam and his father who enjoyed the Kothanar services with respect to the 3rd defendant Temple. The judgment and decree in O.S.No.705 of 2009 would reveal that the father's name of the said Shanmugam was Chellappan. None of the title deeds of the predecessors in title with respect to the suit property if traced from the plaintiff's immediate vendor Regina Mary to Naganatha Gurukkal and brothers, that is, the year 1921, the names of either Kulanthaivel Pillai or Shanmugam or Chellapan would transpire in any of the aforesaid deeds. Though the plaintiff's immediate vendor Regina Mary's husband Yesudoss has been impleaded as 2nd defendant in O.S.No.705 of 2009, even before the filing of the said suit, the plaintiff had purchased the suit property from Regina Mary. Hence, there cannot be any reason for this Court to disbelieve the contentions raised either in the plaint or in the interlocutory application.

18. That apart, the learned Trial Court had erred by negating the submissions made in Paragraph No.5 of the interlocutory application that the 3rd defendant Temple in O.S.No.705 of 2009 had suppressed the fact



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that there had been a sale deed in favour of the 2nd defendant Yesudoss and that he had settled the same in favour of his wife Regina Mary and the said Regina Mary in turn, has sold the same in favour of the plaintiff. The plaint in O.S.No.705 of 209 has been placed before me and on careful perusal of the same, it would transpire that the 3rd defendant Temple had pleaded in the plaint in O.S.No.705 of 2009 in Paragraph No.4,5,6 and 7 that the suit property was sold to Yesudoss by one Shanmugam and his father Chellappan. Having pleaded the same, the 3rd defendant Temple had never sought for a relief of declaration with respect to the suit property in the said suit nor sought the relief of declaring the so-called sale deed executed by Shanmugam and his father Chellappan in favour of Yesudoss as null and void. Without going into all these facts, which are necessary for the adjudication of I.A.No.190A of 2018, the learned Trial Court has blindly proceeded to dismiss the petition seeking amendment of plaint. That apart, the observation of the learned Trial Court in the impugned order that there is no cause of action to file the amendment petition is also not sustainable.

19. The Hon'ble Apex Court in the case of Anathula ***Sudhakar Vs. P.Buchi Reddy & Others reported in 2008 (4) SCC 594*** has



summarised the positions in regard to suit for prohibitory injunction relating immovable property and this suit being a suit for injunction simpliciter, few observations made by the Hon'ble Apex Court in the aforesaid case would be relevant to the facts and circumstances of the case and the same is extracted as follows:

“21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for



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consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.”

20. Fully fortified by the judgment of the Hon’ble Apex Court in the aforesaid case, I am of the considered view that though the original suit in O.S.No.506 of 2014 was one of injunction simpliciter, since subsequent to the filing of the written statement by the 2nd and 3rd defendants and issue with respect to the title has necessarily arisen, obviously the finding on title cannot be recorded in the said suit for injunction simpliciter. Hence, necessarily the plaintiff had filed the interlocutory application for amendment and that too in a pre-trial stage.



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Hence, I do not find any merit in the order passed by the learned Trial Court. Accordingly, the order passed in I.A.No.190A of 2018 is set aside, without going into the merits of the case. Accordingly, I.A.No. 190A of 2018 is allowed.

21. With the above observations, this Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The First Additional District Munsif,
Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI,J.

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Order made in
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