



C.R.P.(MD)No.2040 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.03.2024

Pronounced on : 30.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2040 of 2017

and

C.M.P.(MD)No.10173 of 2017

Mohaideen Kathila Fathima

... Petitioner/
Plaintiff

Vs.

1. M.M.A.Shagul Hameed

2. A.M.M.Syed Shagul Hameed

3. S.M.Naina Mohamed Nachi

... Respondents/
Defendants

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 08.09.2017 made in I.A.No.136 of 2017 in O.S.No.49 of 2014 on the file of District Munsif Court, Ramanathapuram, by allowing the said application.



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For Petitioner : Mr.J.Barathan
For R2 : No appearance
For R3 : Mr.D.Balamuruga Pandi

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.136 of 2017 in O.S.No.49 of 2014 dated 08.09.2017 on the file of the District Munsif Court, Ramanathapuram, dismissing the application filed under Order 6 Rule 17 of the Code of Civil Procedure.

2. The revision petitioner is the plaintiff and the respondents 1 to 3 are the defendants 1 to 3. For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the trial Court.

3. The plaintiff has originally filed the suit through her mother in O.S.No.49 of 2014 against the defendants claiming the relief of setting aside a sale deed dated 15.03.2000 executed by the first defendant in favour of the second defendant and to declare that a sale deed dated



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27.06.2000 executed by the second defendant in favour of the third defendant as null and void and for permanent injunction restraining the defendants 2 and 3 from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Pending suit, the minor plaintiff has attained majority and the plaint was amended consequently. Pending suit, the plaintiff has filed the above application in I.A.No.136 of 2017 under Order 6 Rule 17 C.P.C. seeking permission to amend the plaint as detailed in the application. The third defendant has filed a counter statement raising objections. The first defendant had remained *ex parte* before the trial Court. The learned District Munsif, after enquiry, has passed the impugned order dated 08.09.2017 dismissing the amendment application. Aggrieved by the order of dismissal, the present revision came to be filed.

4. The case of the plaintiff, in the affidavit filed in support of the amendment application, is that the suit property is belonging to the plaintiff vide sale deed dated 15.07.1999 and the plaintiff's mother on behalf of the plaintiff has been in possession and enjoyment of the same, that the plaintiff's mother has erected stone pillars and constructed a small



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shed in the suit property and was enjoying the same, that the second defendant, taking advantage of the drunken habit of the first defendant, who is the father of the plaintiff, had taken the sale deed dated 15.03.2000, that the sale was not for the benefit of the plaintiff and the second defendant has not taken possession of the suit property, that the second defendant has then executed a sale deed dated 27.06.2000 in favour of the third defendant, that the said sale deeds are not valid, that when the suit was pending, the third defendant had trespassed into the suit property in December-2015 and occupied the same, that since the plaintiff has claimed permanent injunction, she was constrained to claim the relief of recovery of possession instead of permanent injunction, that since the suit was pending, the plaintiff was under the impression that the Court would pass a judgment for removal of encroachment and hence, she has not informed the encroachment to her advocate, that when the plaintiff was cross-examined, she has informed about the encroachment and therefore it has become just and necessary to amend the plaint for including the relief of recovery of possession and that the plaintiff will be put to irreparable loss and hardship, if the amendments are not allowed.



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5. The defence of the third defendant is that the third defendant has purchased the suit property on 27.06.2000 and after erecting stone pillars, has constructed a hut and is in enjoyment of the same by paying necessary taxes, that the plaintiff and her mother have not produced any document to show that they were in possession and enjoyment of the suit property, that the plaintiff has earlier filed an application in I.A.No.306 of 2014 for temporary injunction and after enquiry, the said petition was ordered to be dismissed on 11.02.2015, that the plaintiff has not preferred any appeal challenging the dismissal of the injunction application and that therefore it has become clear that the plaintiff or her mother was never in possession and enjoyment of the suit property.

6. It is the further case of the third defendant that the third defendant has absolutely no need or necessity to encroach the suit property as she was in possession and enjoyment of the same since her purchase, that the plaintiff has filed the present application only to fill up the lacuna, that the third defendant has filed her written statement on 28.08.2014 raising necessary averments, that the plaintiff was never in possession of the suit property, that the reasons canvassed for amendment are false and



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untenable, that when the case was pending for the defendants' side evidence after the closure of the plaintiff's side evidence, the above application has been filed abusing the process of Court and that therefore, the application is liable to be dismissed.

7. The plaintiff, in her plaint, has taken a stand that the first defendant-father of the plaintiff has purchased the suit property in the name of the then minor plaintiff with the money given by the plaintiff's mother, that the first defendant, without getting any permission from the competent Court and without any need or necessity, has sold the suit property in favour of the second defendant on 15.03.2000, which is very much against the interest of the plaintiff, that the first defendant is a drunkard and is not having any interest in the plaintiff's welfare and he has not spent any amount for the plaintiff's maintenance, medical or educational expenses and that therefore, the sale in favour of the second defendant executed by the first defendant is not valid and as such, the same is liable to be set aside.

8. According to the plaintiff, the second defendant in turn has executed the sale deed in favour of the third defendant on 27.06.2000 and



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that since the third defendant during the pendency of the suit has encroached the suit property, the plaintiff was forced to file the amendment application.

9. No doubt, the third defendant has taken a stand that the plaintiff's claim is barred by time. It is not in dispute that the plaintiff has filed the suit in March-2014 and the third defendant has filed the written statement in August-2014 and the present amendment application came to be filed on 18.07.2017. It is pertinent to note that Article 65 of the Limitation Act provides 12 years period of limitation to file a suit for recovery of possession from the date when the possession of the defendant becomes adverse to the plaintiff. Even assuming for arguments sake that the plaintiff came to know about the defence of the defendants only from the written statement filed by them, since the same was filed in August-2014, the present amendment application, which was filed in 2017, cannot be taken as barred by time. Admittedly, the plaintiff has not sought for amendment claiming any declaratory prayer and for mandatory injunction, but as already pointed out, only for recovery of possession. Hence, the contention of the third defendant that the proposed amendments is barred by time, cannot legally be sustained.



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10. No doubt, in the case on hand, the plaintiff has claimed post-trial amendments. The proviso under Rule 17 says that after the trial has commenced, an application for amendment shall not be allowed. However, the amendment might be allowed, if the Court thinks that in spite of due diligence, it is not possible for the party to raise the matter before the commencement of the trial. The proviso to Rule 17 which came to be added in the amendment Act of 2002 restricts the power of the Courts to allow amendment of pleadings at any stage of the proceedings and as per the amended proviso, the Court cannot grant permission for amendment after the trial has commenced. However, the Court may allow the amendment if it thinks that, even after due diligence, it was not possible for the party to raise the matter before the trial. It is pertinent to note that the very object of Order 6 Rule 17 C.P.C. is to empower the Courts to try the case on its merits and allow all those amendments that are necessary for determining the real controversy. The Courts are here for the purpose of doing full and complete justice to the parties and that can be done only when the real issue between the parties is heard and determined and not to punish them for their mistakes or negligence.



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11. The Hon'ble Supreme Court in the case of ***Rameshkumar Agarwal Vs. Rajmala Exports P.Ltd. and others*** reported in **2012 (5) SCC 544**, has held that the Courts must not refuse any amendments that are *bona fide*, necessary and honest and the very object of the above proviso is to allow both parties to amend the pleadings in just manner and the basic consideration for permitting amendment should be to avoid multiplicity of litigation.

12. The learned trial Judge, taking note of the fact that the amendment application was filed when the suit was in part-heard stage and the plaintiff has not proved her due diligence, has dismissed the application.

13. As already pointed out, originally the suit was filed by the plaintiff's mother and pending suit only, the plaintiff, after attaining majority, has been prosecuting the suit. It is pertinent to note that the suit property had been purchased in the name of the plaintiff when she was a minor aged about three years represented by her father as guardian-first defendant.



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14. The learned counsel appearing for the plaintiff would submit that the first defendant died on 09.02.2023 leaving behind his wife Rahumath Nisha and his children Aisha Afrina, Kathila Fathima, Yasar Arafath and Syed Afridi as his legal heirs, but the right to defend the present suit in respect of the suit property is with the purchasers, the defendants 2 and 3 and that since the defendants 2 and 3 alone are the legal representatives of the deceased first defendant in respect of the suit property, they may be recorded as legal representatives of the deceased first defendant and filed a Memo dated 26.02.2024 to the said effect. The said Memo filed by the plaintiff was recorded.

15. Considering the above facts and circumstances of the case and also the fact that the suit was filed originally by the plaintiff's mother on behalf of the plaintiff and taking note of the contention of the plaintiff that the third defendant has encroached the suit property during the pendency of the suit, in order to avoid multiplicity proceedings, this Court is of the view that the proposed amendments are to be permitted, in the interest of justice. But the learned trial Judge, without considering the above aspects in proper perspective, has dismissed the application and as such, the same



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is liable to be set aside. But at the same time, considering the length of delay and the conduct of the plaintiff, this Court is of the view that the plaintiff must be mulcted with costs.

16. In the result, the Civil Revision Petition will be allowed on payment of cost of **Rs.5,000/- (Rupees Five Thousand only)** to the third respondent by the revision petitioner, on or before **20.06.2024**, failing which, the revision shall stand dismissed without reference to the Court. Considering the pendency of the suit from 2014 onwards, in case of allowing the revision, the learned District Munsif, Ramanathapuram is directed to proceed with the trial in O.S.No.49 of 2014 and dispose of the suit before the end of September 2024. Consequently, connected Miscellaneous Petition is closed.

30.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

Note : Issue order copy on 10.06.2024



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K.MURALI SHANKAR,J.

csn

To

1. The District Munsif,
Ramanathapuram.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order made in
C.R.P.(MD)No.2040 of 2017
and
C.M.P.(MD)No.10173 of 2017

Dated : 30.04.2024