

(2007) 04 MAD CK 0200

In the Madras High Court

Case No : CRP (PD) No. 1580 of 2004 and C.M.P. No. 14652 of 2004

Kasi Viswanathan (deceased), Chandrasekaran, Saravanan
and Purushothaman

APPELLANT

Vs

C. Kasturi and Others

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2007) 04 MAD CK 0200

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; A. Subramania Iyer, for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—The 5th defendant in the suit has filed this revision challenging the order of the trial court in allowing the Interlocutory Application filed by the plaintiff to amend the plaint prayer to include the third item of the property in the description to schedule of the properties in the partition suit filed by her.

2. The suit has been filed for partition of the suit properties and allot 1/5th of the share to the plaintiff. According to the plaintiff, the property bearing Door Nos: 26 and 27, Singachari Street, Triplicane, has been by inadvertence omitted to be included in the suit schedule of properties and if the same is not included by amending the plaint as sought for in the Interlocutory Application, she will be put to much hardship. The 5th defendant who is the contesting party to the suit objected to the said amendment stating that after several adjournments and after completion of examination of the witnesses when the matter is posted for advancement of arguments, the said Application has been taken out only to delay the proceedings; further she has admitted that no one had been in the possession of the said property; the suit is not valued properly.

3. The learned Additional District and Sessions Judge, (FTC-II), Chennai, on a consideration of the averments and the submissions of the learned Counsel appeared either side, allowed the said Interlocutory Application filed for amendment of the Plaint holding that such an inclusion is necessary in a suit for partition, otherwise, the plaintiff will have to file another suit for such a relief. Aggrieved of the same, the present revision is filed by the 5th defendant.

4. Learned Counsel for the revision petitioner contended that the order allowing the Interlocutory Application is contrary to the amended provisions of Order 6 Rule 17 CPC as it is not established that the plaintiff has come to know of the said fact only subsequently. Further the amendment sought for is only after commencement of trial and at the stage of arguments, which is impermissible. Learned Counsel for the petitioner further contended that by such amendment of the plaint, the cause of action of the suit itself gets changed viz., the suit has been filed for partition presupposing the property as a private property whereas the amendment has been sought for assuming the property to be a trust in nature.

5. A perusal of the impugned order and the typed set of papers would show that the Interlocutory Application has been filed nearly after more than 30 adjournments and only when the matter was posted for arguments, after the witnesses have let in their oral and documentary evidence. It is also to be pointed out that even in her deposition the plaintiff admitted that neither she, nor her family members had ever asserted any right over the said III item of the property for the past 70 years. Further as per the amended provisions of the CPC, viz., Order 6, Rule 17 mandates that pleadings could be amended only to accommodate new facts that have come into existence subsequent to the institution of the suit. But the plaintiff has not stated any acceptable reason except to plead ignorance and inadvertence. Further, when the plaintiff could not assert any right in the said property and particularly, when PW.2 has clearly admitted that she has no records to establish entrustment of property by Selvapathy Chetty and kandasamy Chetty to Kandasamy Chetty, the proposed amendment to include the said property itself is preposterous and by such amendment of pleadings, she cannot withdraw the admissions made in the course of trial, which is impermissible in law.

6. That apart, partition to the property can be sought for only as against sharers and not strangers to the family. When one of the defendant is contesting the title of the plaintiff and so called sharers, it would be very much against the structure and framing of the suit and would be impermissible to permit the plaintiff to have an adjudication as regards title without payment of proper court fee. More over, it is also alleged that the amendment would change the cause of action viz., the amendment is sought for assuming the property to be trust in nature. In O.M.S. Abdul Basith Alim Sahib Vs. S.S. Mohamed Ali, this Court held that amendment cannot be allowed if it introduces a totally new cause of action or a new case. In 2001 (2) CTC 484 (Tirupathi Nadar and Ors. v. Pakiyalakshmi and

Ors.) this Court also held that belated application for amendment can be allowed if it does not cause prejudice to other side and an amendment application filed at the state of cross examination of the defendant which would alter the nature and character of the suit, which would cause prejudice to the plaintiff, then such an amendment cannot be permitted to be allowed. In 2007 4 CTC 135 (Kamatchi Ammal v. Lakshmanan), this Court reiterated that if the amendment sought for would result in putting inconsistent or alternative plea which could displace the plaintiff's case and cause irretrievable prejudice, then such amendment cannot be allowed. Moreover, once admissions are made in the course of trial, the same cannot be withdrawn later by filing an amendment petition, as has been held by the Hon''ble Apex Court in Heeralal Vs. Kalyan Mal and Others, .

7. For the reasons stated above, this Court holds that the order passed by the court below is vitiated by illegality and error of material misdirection, which warrants interference by this Court. Accordingly, the order of the trial court is set aside and the CRP is allowed.

8. Consequently, connected CMP is closed. No costs.