
(2017) 03 MAD CK 0168
In the Madras High Court
Case No : 2361 of 2012

P.Gopal

APPELLANT

Vs

C.Kuppammal

RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

Citation : (2017) 03 MAD CK 0168

Hon'ble Judges : M.V.Muralidaran

Bench : SINGLE BENCH

Advocate : M.V.Muralidaran

Judgement

1. The plaintiffs are the civil revision petitioners before this Court, challenging the order in I.A.No.882 of 2011 in O.S.No.497 of 2010, dated 04.01.2012, on the file of the Principal District Munsif Court, Vellore.
2. The case of the petitioners/plaintiffs is that he has filed the suit in O.S.No.497 of 2010 against this respondents/defendants before the learned Principal District Munsif Court, Vellore, for permanent and for injunction.
3. On receipt of the summons, the respondents/defendants were appeared through their counsel denying the allegations set out in the written statement that he also stated that the defendants father Chinnakulandai, have filed a suit for declaration and injunction in O.S.No.976 of 1990 against this defendants and got the exparte decree in respect of the suit property in S.No.259/4 to an extent of 41 cents out of 1.31 acres, S.No.273/1 to an extent of 61 cents out of 1.22 acres, S.No.272/3 to an extent of 90 cents out of 1.82 acres and S.No.264/4 to an extent of 79 cents out of 1.72 acres and Gramanatham land in S.No.292.
4. The said copy of the plaint and the judgment and decree in the said O.S.No.976 of 1990 was filed along with the application since the respondents father namely Chinnakulandai has filed the suit falsely in O.S.No.976 of 1990 and claiming 41 cents in S.No.259/4, which was a self acquired property of Periyakulandai, the said property was purchased by the petitioners in the name

of their father namely Periyakulandai on 07.07.1977 from one Mr.Radhakrishnan for valid sale consideration. Therefore, these respondents claiming the suit property by way of the decree in O.S.No.976 of 1990, filed for their father late Chinnakulandai, but due to lapse of 20 years, the petitioners could not able to restore the suit for contesting on merits. In the meanwhile, the said Chinnakulandai was died at the stage of E.P. Proceedings in E.P.No.262 of 2001. Due to the mistaken, the said fact and the property was not mentioned in the original plaint in the present case in O.S.No.497 of 2010.

5. These petitioners were filed the present application in I.A.No.882 of 2011 for amendment, amending the plaint by including the said survey numbers about the facts of the survey numbers in the plaint and prayed the trial Court to permit them to amend the said fact.

6. On receipt of the notice, the respondents/defendants have filed affidavit for condoning the allegations, the respondents/defendants have denied all the allegations set out in the affidavit.

7. Though these respondents/defendants were filed their written statement, but these petitioners/plaintiffs had now only come forward by way of this application to fill up the lacuna and the application is not maintainable.

8. Apart from this, the respondents also states that as per the averments made in the affidavit in the application filed by the petitioners/plaintiffs, it is made clear that these petitioners/plaintiffs are well known about the suit filed by their father Chinnakulandai and also known the E.P. proceedings pending against the decree. After the lapse of 10 years, now only they come forward and filed the present application, which is not at all maintainable, without filing any application to set aside the exparte decree obtained by these respondents father in O.S.No.976 of 1990, without contesting the E.P. Proceedings in E.P.No.262 of 2001, now only they come forward and filing the application by saying that due to mistakenly, which was not mentioned in the plaint, it is not at all entertain. Therefore, the very filing of the application in I.A.No.882 of 2011 is not maintainable and it is liable to be dismissed and hence, they prayed for dismissal of the said application.

9. Considering both side arguments, the learned Principal District Munsif, Vellore was pleased to dismiss the application on the ground that only to fill up the lacuna, these petitioners/plaintiffs were filed the present application. The learned Judge also states that earlier these petitioners/plaintiffs were filed the application in I.A.No.418 of 2011 for amendment, amending the schedule of property and the same was allowed by the very same Court on 12.04.2011 and at that time, they have not filed the amendment, inclusion of this averments also, but on 2nd time it is stated that they came to know only now is not at all acceptable one.

10. The learned Judge also states that though it is a settled law that the amendment of the plaint should be considered liberally does not open to the petitioners to file a petition for amend the plaint. According to whims and fancies, the learned Judge also states that the petitioners/plaintiffs were not

given any valid reasons for amendment. Therefore, the proceedings of the amendment, the learned Principal District Munsif, Vellore is pleased to dismiss the application. Challenging the said order, the present civil revision petition is filed before this Court.

11. I heard Mr.S.Prasad Babu, learned counsel appearing for the petitioners and Mr.C.P.Sivamohan, learned counsel appearing for the respondents.

12. It is the case of the petitioners/plaintiffs is that originally they filed the present suit for declaration and injunction for certain property, but now they come forward by saying that the respondents father late Chinnakulandai filed a suit in O.S.No.976 of 1990 against the respondents and the same was decreed in his favour, subsequently an execution petition in E.P.No.262 of 2001, was also filed and at that time, the decree holder late Chinnakulandai was died. The allegations of the petitioners/plaintiffs is that they were known the above facts, but, there was an error to omit and now sought for inclusion of the fact in the plaint.

13. When these petitioners/plaintiffs already filed an I.A.No.418 of 2011 for amending the schedule of property that application was allowed by the very same Court on 12.04.2011. But, now they again filed, that too only after filing the written statement, they came to know that the present facts and filing of the suit by the father of the respondents/defendants through the written statement filed by the respondents/defendants.

14. Admittedly, these petitioners/plaintiffs were filed the earlier application in I.A.No.418 of 2011 for amendment and the said application was allowed on 12.04.2011. But, the learned Judge says that when the petitioners filed earlier application for amendment, he would have mentioned the same and sought for the amendment in the earlier application itself. But, after allowing the said application on 12.04.2011, he cannot filed another application for amendment of schedule of property.

15. It is the case of the petitioners/plaintiffs that in their affidavit they alleged that the very filing of the suit in O.S.No.976 of 1990 and the execution petition in E.P.No.262 of 2001 was came to know only by this petitioners/plaintiffs through the written statement filed by the respondents/defendants. Therefore, they sought for the amendment of the schedule of the property and the suit in O.S.No.976 of 1990. On perusal of the records, it is made clear that the defendants were filed their written statement only on 21.04.2011 and the Court seal mentioned that the written statement filed on 21.04.2011, but the earlier application in I.A.No.418 of 2011 was allowed on 12.04.2011 i.e. before filing the written statement, the said application was allowed.

16. If the written statement was filed well before the date on 11.04.2011, definitely this petition would filed or mentioned the amendment in the said application itself.

17. Apart from this, admittedly, the petitioners/plaintiffs wants only to include the said property by way of an amendment which was already dealt with the same Court in O.S.No.968 of 1990 and inclusion of the said survey number as well as the case number would not take away the right of the respondents and there is no change of character of the case.

18. It is also made clear that the execution petition also dismissed by the Additional District Munsif Court, Vellore in E.P.No.261 of 2001 in O.S.No.976 of 1990 on 06.10.2004 itself, but there is no record to shows that after dismissal of the said execution petition, no further action was taken by the deceased plaintiff/decree holder in E.P.No.261 of 2001.

19. During the course of the arguments, the learned counsel appearing for the petitioners/plaintiffs were produced a judgment reported in 41 MLJ 418 for supporting the case.

20. This Court and the Hon'ble Apex Court was categorically held that if the amendment sought for could not be change the character of the suit, the Court can allow the said applications. Accordingly, the inclusion of the said suit number in O.S.No.976 of 1990 and E.P.No.261 of 2001 there was no change of character of the suit. Even earlier amendment, the very same Court is allowed the application, but after passing orders in the above I.A.No.418 of 2011, the written statement was filed and on knowing the averments in the written statement, the present application in I.A.No.882 of 2011 was filed by the petitioner/plaintiff. Therefore, there was no prejudice would be caused to the respondents/defendants for allowing the said applications. The learned Judge also not considered the petition in a proper manner and simply dismissed the petition with the above reasons. Accordingly, there is absolute necessity of this Court, for the interference in the order and accordingly, the same is liable to be set aside.

21. In the result: (a) the civil revision petition is allowed, by setting aside the order passed in I.A.No.882 of 2011 in O.S.No.497 of 2010, dated 04.01.2012, on the file of the Principal District Munsif, Vellore;

(b) the trial court is directed to carry out the amendment and the respondents/defendants are permitted to file a reply, if any, within a period of 15 days from the date of amendment of the plaint and thereafter, the trial court is directed to dispose of the suit within a period of three months. No costs. Consequently, connected miscellaneous petition is closed.