
(2004) 03 MAD CK 0041
In the Madras High Court
Case No : C.R.P. (NPD) .No.824 of 2001

Sarammal

APPELLANT

Vs

S. Dilshad Begum, Abdul Khader and Salem Municipality

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Citation : (2004) 3 RCR(Civil) 308

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : P.Vellappan and Sarvabhauman Associates, for the Appellant; A.R.L. Sundaresan, A.L. Gandhimathi, for R1 and R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

S. Sardar Zackria Hussain, J.

1. The Revision petitioner is the first defendant in O.S.No.896 of 1984 on the file of the Additional Sub Court, Salem.

2. This Civil Revision Petition is filed against the order passed in I.A.516 of 2000, which was filed for seeking amendment to the prayer in the

plaint i.e. to cancel the sale deed dated 2.3.1952 executed by the father of the plaintiffs 2 and 3; to delete the prayer with regard to declaration and

also to strike out the inconsistent pleas.

3. The Trial Court allowed the said I.A. and passed a conditional order to deposit a sum of Rs.1,000/- on or before 5.2.2001. Aggrieved over the

said order, the revision petitioner/first defendant has filed this revision petition.

4. The plaintiffs, respondents 1 and 2 herein filed I.A.No.516 of 2000 and in the counter filed by the first defendant/revision petitioner, it is stated

that the first plaintiff is the mother and the second plaintiff is the sister of the

3rd plaintiff. Originally the suit was filed by the plaintiffs 1 and 2 to cancel the sale deed dated 2.3.1952 executed by the father of the plaintiffs 2 and 3; for declaration of their title to the suit property on the ground that the sale deed dated 2.3.1952 executed by their father was sham and nominal; even if it is true, they have perfected title by adverse possession; the first defendant has claimed right over the suit property 30 years after the Sale Deed and 15 years after the death of the father of plaintiffs 2 and 3 on the basis of the impugned Sale Deed and demanded delivery of possession as per notice dated 7.12.1982. The suit was filed as in forma pauperis. Originally, the 3rd plaintiff was impleaded as second defendant and during the pendency of the suit, he was transposed as 3rd plaintiff. Thereafter their Advocate also died and another Senior Advocate has been engaged. The case of the plaintiffs is that the Sale deed dated 2.3.1952 is sham and nominal and hence the relief of cancellation is not necessary.

5. The plaintiffs have alternatively prayed that they have perfected title to the suit property by adverse possession assuming that the sale is true and valid. The plaintiffs have also pleaded that there are two adverse possession one perfected by the vendor viz., the father of plaintiffs 2 and 3 and another perfected by them on the death of their father and as such, two declaratory reliefs are not necessary. It is also stated that the sale deed was given birth to under undue influence of the first defendant and her husband and there is also a plea of agreement to re-convey. These are inconsistent with the original and main plea of sham and nominal. Therefore, the inconsistent pleas have to be deleted by amending the plaint. The proposed amendment does not give any new facts and no new relief is sought for. The nature of the case is not altered by the proposed amendment.

6. The petition was resisted in the counter that the suit was filed on 17.11.1983 by the plaintiffs 1 and 2 as in forma pauperis arraying the 3rd plaintiff as second defendant in the suit since he was employed in T.N.E.B. on the date of the suit. The proposed amendment of the plaint relating to Sale Deed dated 2.3.1952 is totally changing the cause of action and character of the suit. After the second defendant was transposed as 3rd plaintiff on 1.9.1994, he was examined as P.W.1 in the Chief-Examination and

during the course of Cross-examination, I.A.No.733 of 1997 has been filed to pay the Court fee and I.A.No.111 of 1999 to amend the plaint. On the death of the counsel for the plaintiffs, who filed the suit, the Advocate, who has entered appearance to conduct the case on behalf of the plaintiffs has filed the amendment petition setting out a new case with regard to vital questions involved and cross examined on that points. The first defendant has filed the written statement with reference to the Sale Deed dated 2.3.1952 and adverse possession as claimed by the plaintiffs. There is no necessity to amend the plaint at this stage while the suit has been part heard and if the amendment is ordered, it will completely change the character of the suit itself. The amendment petition was filed 16 years after filing of the suit.

7. The Trial Court, considering the argument advanced on either side and after perusing the records has passed the order as stated above. The order is challenged in this Civil Revision Petition.

8. The learned counsel for the revision petitioner contended that the amendment is sought 16 years after the institution of the suit in view of the change of counsel for the respondents 1 and 2/plaintiffs 2 and 3. The learned counsel further contended that entirely a new case is set up by way of amendment which cannot be allowed. Further, according to the learned counsel for the revision petitioner, the proposed amendment would change the cause of action and the character of the suit. Inasmuch as in the trial Court, P.W.1 was cross-examined and to circumvent such evidence, the amendment of plaint is sought for.

9. The learned counsel for the respondents 1 and 2/plaintiffs 2 and 3 in his argument has stated that inasmuch as no new case is set up in the proposed amendment, considering the said fact, the amendment petition has been allowed and as such, there is no infirmity in the order of the trial Court.

10. As per the amendment petition I.A.No.516 of 2000, 10 amendments have been proposed. The first six amendments sought for are:-

(1) To omit the last sentence in para 3 of the plaint, namely, "It was agreed between the parties to the document that the first respondent-defendant should re-convey the suit property by another appropriate deed after the matter is settled.

(2) To omit the following sentence in para 4 of the plaint, namely, ""The said Mohideen Abdul Khader has also assured the said Sikander

Mohideen that a document of reconveyance will be executed after the dispute is over as the dispute referred to their family reputation. The said

Sikander Mohideen believed the words of the first respondent-defendant and her husband Mohideen Abdul Khader as he was in their influence

and sick and had executed the said document in the name of the first respondent-defendant.

(3) To omit the last sentence in para 4 of the plaint namely, ""Further it is submitted that the sale deed dated 2.3.1952 was given birth to under the

undue influence of the first respondent-defendant and her husband Mohideen Abdul Khader on the said Sikandar.

(4) To add the following as para 4-A after para 4:-

The defendant number-1 agreed to execute a sale deed in respect of the suit property in favour of the said Sikander Mohideen or his nominee as

and when the crisis was over.

(5) To omit para 9 of the plaint and substitute the following as para 9:-

As already stated Sikander Mohideen executed the sale deed dated 2.3.1952 in respect of the suit property in favour of first defendant just to

prevent the creditors from proceeding against the property. It was never intended to be acted upon nor was ever acted upon. As such, it is a void

document and need not be set aside.

(6) To omit para 10 and substitute the following as para 10:

Sikander continued to be in possession even after the sale deed was executed on 2.3.1952 and has been exercising all acts of an owner till he died

on 4.4.1967. These after his heirs were in possession and enjoyment of the property as owners. At no point of time after 2.3.1952 till 7.2.1982,

the first defendant claimed any right of ownership. By this time Sikander perfected the title to the suit property by adverse possession. The plaintiffs

have also perfected title by adverse possession independent of the adverse possession by Sikander. The first defendant has never exercised any

right as an owner. She did not pay the property tax till 1982. The property tax registry was not transferred till 1983. She did not object to the

remodelling or leasing out the same to third parties by plaintiffs and prior to them by Sikander.

11. In the plaint in paragraph 3 it is set out that the suit property originally belonged to one Sikkandar Mohiddin as per partition deed dated

29.7.1946 and he had incurred heavy debts in the leather business and to compel the creditors to arrive at certain settlement he nominally executed

a document purporting to be a sale deed in the name of the first defendant on 2.3.1952, who is daughter-in-law of Abbas Rowther and the said

document is sham and nominal. The next sentence in the said paragraph 3 of the plaint is ""It was agreed between the parties to the document that

the first respondent-defendant should reconvey the suit property by another appropriate deed after the matter is settled"". This sentence is sought to

be deleted by way of proposed amendment. The other proposed amendments 2 to 5 also touching in that aspect with regard to the assurance

made by the first defendant's husband Mohiddin Abdul Khadar relating to the execution of the deed of reconveyance and therefore it is clear that

as per the plaint originally filed, the suit was filed seeking several reliefs, viz., to cancel and set aside the sale deed dated 2.3.1952 executed by the

Sikkandar Mohiddin, the father of the plaintiffs 2 and 3 and to declare that the plaintiffs are entitled to the suit properties as the heirs of the said

deceased Sikkandar Mohiddin and to declare the possessory title of the deceased Sikkandar Mohiddin and for mandatory injunction for effecting

mutation of names in the necessary registers maintained by Salem Municipality.

12. By the amendment as sought for in I.A.No.516 of 2000 in O.S.No.896 of 1984, the averments in the original plaint such as that there was an

agreement to reconvey the property and that the suit sale deed came into existence under the influence of the first defendant and her husband are

sought to be deleted, in that no such averment is necessary in view of the fact that it is a definite case of the plaintiffs that the suit sale deed is only a

sham and nominal. Accordingly, the pleadings to that effect have to be deleted and as mentioned in paragraphs 3 and 4 and to add paragraph 4-A

that the first defendant agreed to execute the sale deed in respect of the suit property in favour of the said Sikkandar Mohideen or his nominee as

and when the crisis was over. Further in that view, paragraph 9 also sought to be deleted. Further, by omitting paragraph 10, it is prayed as per

amendment to substitute the paragraph as set out above that Sikkandar Mohideen perfected title to the suit property by adverse possession and

also the plaintiffs. From the said amendments 1 to 6 no new case is set up. In fact it is clearly set out in paragraph 5 of the plaint that the possession of the suit property continued to be with Sikkandar Mohideen even after execution of the suit sale deed and till his death. As regards the other amendments, viz., amendment No.7 relates to deletion of paragraphs 11, 15, 16(a), (b), (c) and (d) and the 8th and 9th amendments are with regard to the substitution of paragraph 15 towards valuation of the suit properties for the purpose of payment of court fees and jurisdiction. The 10th amendment is with regard to the deletion of the relief sought for as per paragraph 18(a), (b) and (c) and to substitute the same as 18(a) and (b) and renumber the paragraph d, e, f, as c, d, e in paragraph 18 in consonance with the amendment sought by way of 1 to 6 amendments. As such no new case is set up in view of the amendment sought as per 7 to 10 amendments. It is settled law that amendment can be ordered if no new case is set up in the amendment. Therefore, the trial Court has rightly allowed the amendment petition I.A.No.516 of 2000 by ordering cost of Rs.1,000/- since amendment petition has been filed 16 years after filing of the suit. Such order does not call for any interference.

13. In the result, this Civil Revision Petition is dismissed confirming the order and decretal order dated 29.1.2001 made in I.A.No.516 of 2000 in O.S.No.896 of 1984 on the file of the Additional Sub Court, Salem. No