

(2008) 07 MAD CK 0073

In the Madras High Court

Case No : C.R.P. (NPD) No. 761 of 2006 and C.M.P. No. 6370 of 2006

Saraswathy and 3 others

APPELLANT

Vs

Varalakshmi and 8 others

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Citation : (2008) 07 MAD CK 0073

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant;

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The above Civil Revision Petition is filed against the order of the learned Subordinate Judge, Chidambaram dated 18.10.2005 in I.A.No.50 of 2005 in A.S.No.54 of 2004. The petitioners are the plaintiffs 2 to 5 in the suit. One Murugesam Pillai is the husband of the first petitioner and father of 2 to 4 petitioners. Originally, he filed a suit before the learned District Munsiff Court, Chidambaram for permanent injunction against the respondents herein. The suit was decreed as prayed for. The respondents preferred appeal in A.S.No.54 of 2004 on the file of the learned Sub Judge, Chidambaram, which is pending. After the death of Murugesam Pillai, the petitioners herein were impleaded as legal representatives and they are pursuing the appeal presently. They filed an application before the appellate court for amendment of the plaint with reference to the extents in item Nos. 4, 9 and 10 in the suit schedule.

2. Learned counsel for the petitioners submitted that he is not pressing the civil revision petition as for item Nos.9 and 10 and he is now arguing for 4th item alone in the plaint. The extent for the 4th item has been mentioned as 15 cents instead of 76 cents in Survey No.17/1 and 4th item of the plaint may be amended as 76 cents.

3. In the affidavit filed before the lower appellate court, the reason adduced for

filing the application is that the mistakes are clerical errors. The above said amendment application was vehemently opposed by the respondents by stating that the wrong description was pointed out in the written statement about 15 years ago and the suit was tried only in the year 2003 and even in the court, the wrong description was pointed out in the course of recording of evidence and arguments and that these discrepancies were pointed out by the respondents much earlier and even then the petitioners has not taken steps to amend the plaint.

4. Heard the learned counsel for the petitioners. Conceding the delay found in the proceedings, the learned counsel for the petitioners submitted that there is nothing malafide on the part of the petitioners to come forward with the petition for amendment. It is his further argument that the deceased plaintiff Murugesam Pillai was an old man who was suffering from illness and so that he could not pursue the case effectively and only these petitioners were able to see the mistakes which have crept in the plaint.

5. As far as the grant of relief of amendment of the pleadings is concerned, mere delay will not preclude the court from granting the relief. If the court finds allowing of amendment application would render substantial justice to the parties, there is no stumbling block for granting the relief to the petitioners. No doubt there had been a considerable delay on the part of the plaintiffs to bring the error in the pleadings to the knowledge of the Court. Being the plaintiffs in the suit, they may not have any interest to protract the proceedings. They may be desirous to enjoy the fruits of the decree. It appears that the defence has been taken by the respondents that Ex.A.1 agreement produced on behalf of the petitioners is forged one. Even in the said document, the correct extent namely 76 cents has been mentioned. The learned Sub Judge is of the view that the errors could not have been typographical or clerical errors. Even though the said finding appears to be reasonable one, this court is not reluctant to grant the relief. The learned counsel for the petitioners also submits that when the decree is placed before the executing court by any of the parties, the executing court cannot go behind the decree even if it is found unworkable. The said argument could be countenanced.

6. I am of the view that no malafide intention on the part of the petitioners could be inferred in filing the application for amendment. In order to render justice to the parties, it is necessary to allow the application as far as item No.4 is concerned. Having regard to these circumstances, the civil revision petition is allowed as far as item No.4 of the plaint is concerned. As far as item No.9 and 10 of the plaint is concerned, the civil revision petition is dismissed as not pressed. No costs. Consequently, connected miscellaneous petition is closed.