
(2013) 11 MAD CK 0165

In the Madras High Court

Case No : C.R.P. (PD) No. 1811 of 2013 and M.P. No. 1 of 2013

Sarojini @ Saroja

APPELLANT

Vs

Palaniammal, Balamurugan, Rathinam and Ranganayaki

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0165

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; A.K. Kumarasamy, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—Heard the learned counsel appearing for the petitioner as well as the respondents. The Civil Revision Petition has been preferred under Article 227 of the Constitution of India, challenging the order dated 26.02.2013 made in I.A. No. 12 of 2013 in O.S. No. 74 of 2010 on the file of II Additional Sub Court, Erode.

2. It is seen that the suit in O.S. No. 74 of 2010 was filed by the petitioner/plaintiff seeking judgment and decree to set aside the sale deed dated 25.09.2003 executed in favour of the 1st defendant in respect of the 2nd item of the suit property which was registered as document No. 3705 of 2003 on the file of Registrar of Erode is null and void, not binding on the plaintiff and to set aside the sale deed dated 26.10.2006 executed in favour of the 4th defendant in respect of the 1st item of the suit property, which was registered as document No. 4764 of 2006 on the file of Registrar of Erode is null and void, not binding the plaintiff on the ground that the same is invalid under law and other consequential reliefs.

3. In the said suit, Interlocutory Application in I.A. No. 12 of 2013 was filed by the petitioner/plaintiff under Order 6 Rule 17 of the Code of Civil Procedure,

seeking amendment that was dismissed by the Court below. Aggrieved by which, the revision has been preferred by the petitioner/plaintiff.

4. Mr. N. Manokaran, learned counsel appearing for the petitioner submitted that to meet the ends of justice, the Court below could have allowed the proposed amendment. Merely based on the delay, the I.A. could not have been dismissed by the Court below. Learned counsel for the petitioner drew the attention of this Court to Order 6 Rule 17 C.P.C. and argued that there is no total bar in allowing a petition seeking amendment of the plaint. In support of his contention, he relied on the decision reported in Thiru Alankadu Immudi Ahora Dharma Sivachariar Aiyra Vaisya Madam Vs. Udumalpet Samayapuram Ayira Vaisya Sangam, wherein this Court (M. Karpagavinayagam, J.) has held as follows:

5. (11) The law in this regard is quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed.

(12) In regard to the stand of the defendants that the declaration sought by the plaintiff's is barred by limitation, there is dispute and it is not an admitted fact. While the defendants pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the plaintiffs in this case ought to have been within three years when the right to sue first accrued, the plaintiffs contend that the same does not fall under the said entry but falls under Entry 64 or 65 of the said Schedule to the Limitation Act, which provides for a limitation of 12 years, therefore, according to them, the prayer for declaration of title is not barred by limitation. In such a situation, where there is a dispute as to the bar of limitation, the amendment, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea of limitation, being disputed, could be made a subject-matter of the issue, after allowing the amendment prayed for.

5. According to the learned counsel appearing for the petitioner, allowing the petition would not cause prejudice to the respondents/defendants, however, the petition was dismissed by the Court below, hence, the revision has been preferred under Article 227 of the Constitution of India.

6. Per contra, Mr. A.K. Kumarasamy, learned counsel appearing for the respondents contended that the Interlocutory Application filed by the petitioner, seeking amendment of the plaint is not a matter of right. Learned counsel for the respondents further contended that it is a part heard case wherein plaintiff's evidence was closed and DW 1 to 3 were also examined, at that stage, the petitioner/plaintiff filed the I.A. seeking amendment of the plaint so as to

challenge the sale deed dated 19.01.1999, seeking to set aside the sale deed dated 19.01.1999. Learned counsel for the respondents further contended that as per law of limitation, within three years after the execution of the decree, one could have filed the suit seeking a decree to set aside the sale deed. Learned counsel for the respondents submitted that the amendment sought for is against the Limitation Act, hence, the same is not legally maintainable.

7. In the present case, the amendment sought for is pertaining to challenging a sale deed dated 19.01.1999 and the petitioner/plaintiff has filed the application, seeking the amendment in the year 2013, in the part heard case, hence, according to the learned counsel for the respondents herein, it has to be construed only as an abuse of process of law and Court. He drew the attention of this Court to the proviso to Order VI Rule 17 of the CPC which reads that no application for amendment shall be allowed after the commencement of the trial, unless the Court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. It cannot be disputed that after the commencement of trial, seeking amendment would not be a matter of right and the proviso reads that after the commencement of trial, the amendment shall not be allowed, unless the Court is satisfied that in spite of due diligence, the party, the petitioner herein could not raise the matter before the commencement of trial.

8. In the instant case, admittedly, the alleged sale deed was executed on 19.01.1999. However, in the part-heard case, the petitioner/plaintiff filed an application seeking the following amendments:

Particulars of the proposed amendment sought for

1) In page No. 10 of the plaint, add the following as para 17-(a) after para 17:-

17-(a) The plaintiff is the semi-illiterate. Though she has filed the suit for setting aside the sale deeds dated 25.09.2003 and 26.10.2006, the defendants have created yet another sale deed dated 19.01.1999 in favour of the 1st defendant for a sum of Rs. 68,000/- in respect of the 4th item of the suit properties to the extent of 377-1/2 sq. feet. Though she has pleaded in the plaint that the 1st defendant has obtained a sale deed during the course of filing the plaint, she has failed to seek the relief of setting aside the sale deed dated 19.01.1999 executed in favour of the 1st defendant. Now, only during the course of filing the documents on the side of the defendants, she came to know about the said sale deed. She has obtained the certified copy of the document only recently from the file. Therefore, for proper adjudication, she has to seek the relief of setting aside the sale deed dated 19.01.1999 which is invalid and obtained by way of fraud and misappropriation. The properties covered under the sale deed dated 19.01.1999 are described as 4th item of the suit properties. There was no consideration for the said sale deed. The sale deed is unenforceable and never acted upon. The plaintiff is still in possession of the properties. Since the sale deed is invalid, the same is liable to be set aside.

2) In page No. 11, add the following after the description of the court fee column namely permanent injunction:-

Setting aside the sale deed dated 19.01.1999:-

The plaintiff valued the relief of setting aside the sale deed dated 19.01.1999 at Rs. 68,000-00 and a court fee of Rs. 5,100-50 is paid thereon u/s 40 of the Tamil Nadu Court Fees and Suits Valuation Act 17 of 2003.

3) In the court fee column, delete the figures Rs. 4,26,600/- and insert the figure Rs. 4,94,600/- and delete the figure Rs. 31,996.50 and insert the figure Rs. 37,097/- in the respective places.

4) In page 12 of the plaint in the prayer column, add the following as column b-(a):-

b-(a) setting aside the sale deed dated 19.01.1999 executed in favour of the 1st defendant in respect of the 4th item of the suit property which is registered as document No. 86 of 1999 on the file of Registrar of Erode is null and void, not binding the plaintiff as the same is invalid under law.

5) In the description of the suit properties, add the following as 4th item:-

Item No. 4:-

Erode R.D., Erode Sub-R.D., Erode Taluk, Erode Village, outside the Municipal limits of Erode, S.F. No. 486 punja acre 0.99 in which punja acre 0.37-1/2 which is converted as house sites by forming roads, named as "Veeran Nagar", in which the house site situated within the following boundaries:-

To the south of the properties of the plaintiff;

To the north of the properties of Viswanathan (EB);

To the west of the properties of Pichamuthu (previously Pappathi); and

To the east of the properties of Saraswathi and Karichipalayam Ramasamy goundar;

within the said boundaries, east-west on both sides 20 feet;

north-south on the west 37 feet;

north-south on the east 38-1/2 feet;

totaling to an extent of 755 sq. feet in which southern common half share 377-1/2 sq. feet, the said lands, the terraced house constructed therein, electric service connection, water tap connection and all other mamool pathway and all other easementary rights attached thereto.

9. Having gone through the copy of the affidavit filed by the petitioner before the Court below, I am of the view that the petitioner/plaintiff has not prima facie established that in spite of due diligence, it could not be brought to the notice of

the Court. The Court below has passed a detailed order whereby dismissed the application filed by the petitioner/plaintiff. Having gone through the facts and circumstances of the case, I am of the view that the decision cited by the learned counsel appearing for the petitioner is not applicable for allowing the petition. Hence, I could find no error or infirmity in the impugned order passed by the Court below so as to warrant any interference by this Court and accordingly, the revision is liable to be dismissed. In the result, the Civil Revision Petition is dismissed. Consequently connected M.P. is also dismissed. No order as to costs.