
(2011) 10 MAD CK 0173
In the Madras High Court
Case No : C.R.P. No. 2698 of 2011

Syed Shakir Ulla

APPELLANT

Vs

N.J. Rosy and Others

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2012) 1 MLJ 1058

Hon'ble Judges : M.Y. Eqbal, C.J

Bench : Single Bench

Advocate : P.K. Sabapathi, for the Appellant; S. Surya Prakash for Respondents 1 to 7 and Mr. R.R. Murugan for Respondent - 8, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Mr. M.Y. Eqbal, Chief Justice

1. This Civil Revision Petition has been filed against the order of the learned V Assistant Judge, City Civil Court, Chennai dated 13.09.2010 made in I.A. No.6023 of 2010 in O.S. No.6441 of 2008, whereby the learned Judge dismissed the amendment petition filed by the petitioner/plaintiff to amend and add necessary prayers in O.S. No.6441 of 2008.

2. The suit was for permanent injunction restraining the 8th respondent/8th defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The petitioner/plaintiff alleged that Respondents/Defendants 1 to 7 sold the suit property to him under a sale deed dated 16.10.2006 registered as document No.2157/2006 at S.R.O., Adyar for a valid sale consideration of Rs.18,00,000/-. Subsequent to purchase, the petitioner/plaintiff incurred a sum of Rs.30,00,000/-towards the construction of the building in the suit property. It is further alleged that only after receiving the notice from the 8th defendant's advocate, the petitioner/plaintiff came to know of the equitable mortgage created by respondents/defendants 1 to 7 with the 8th

respondent by depositing the title deeds of the suit property for raising a loan. Respondents/defendants 1 to 7, suppressing the factum of mortgage, sold the suit property to the petitioner/plaintiff. It is further alleged the 4th respondent/4th defendant informed the petitioner/plaintiff that they would settle the entire mortgage loan and redeem the property from the mortgage and collect all original title deeds from the 8th respondent herein. But, even after the completion of examination of the witness on the plaintiff's side, they have not taken any effective steps to discharge the mortgage. Therefore, it is alleged by the petitioner/plaintiff that for the purpose of determining the real questions in controversy in the above suit, the petitioner/plaintiff is seeking amendment of the prayers in the said suit. By way of amendment, the petitioner/plaintiff sought for a declaration to declare him as the bona fide purchaser of the suit property; for a permanent injunction against the 8th respondent from interfering with the peaceful possession and enjoyment of the suit property; and for a decree against defendants 1 to 7 for the relief of mandatory injunction, directing defendants 1 to 7 to pay the entire mortgage money payable to the 8th defendant and redeem the property from mortgage within a stipulated time, failing which to direct the 8th defendant to proceed against the property measuring an extent of 307 sq.ft. situated at Door No.15/1/1, 1st Street, Govindarajapuram, Kottur Village, Adyar, Chennai - 20 which is in possession of defendants 1 to 7, after adjusting the sale proceeds and for the remaining mortgage money, if any, proceed against defendants 1 to 7 individually to realise the same.

3. In the counter filed by the respondents 1 to 7, it is stated that the application filed for amendment of the pleadings after the commencement of the trial is not maintainable in law and on facts, and that the application is liable to be rejected in limine inasmuch as the petitioner/plaintiff has commenced his evidence and he was also cross examined extensively by the advocate on the other side, if allowed would cause grave prejudice and irreparable loss to the respondents 1 to 7. It is further alleged that as per the Sale Deed dated 16.10.2006, the suit property is valued as Rs.15,00,000/-and in such circumstances, in the absence of plea for payment for proper additional court fee payable by him, prayers in the suit cannot be altered or amended. It is further alleged that if the proposed amendment is allowed, it would change the complexion of the case and alter the character of the suit. It is also stated that the reliefs sought for by the petitioner/plaintiff by way of amendment ought to have been sought for within 3 years from the date of sale deed viz., 16.10.2006. Therefore, if the amendment petition is allowed, it would be against the existing provisions of law. It is further stated that the provisions of Order 2, Rule 2 of the CPC are attracted to the case on hand, wherein it is clearly stated that if a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Lastly, it is stated that when the plaintiff has intentionally and deliberately omitted to sue for a particular relief/reliefs at the inception, he having allowed by efflux of time a right to accrue to the opposite party, that right cannot be taken away by bringing an

amendment, which would defeat the very right which is available to the contesting opposite party.

4. The 8th respondent/8th defendant in his counter stated that respondents 1 to 7/defendants 1 to 7 had mortgaged the entire property to the extent of 973 sq. ft. Therefore, the entire extent of the suit schedule property had already been decreed u/s 90 of the Tamil Nadu Co-operative Societies Act, 1983 and subsequently, the Execution Petition had also been ordered and the suit property had also been brought for auction sale twice, and the petitioner/plaintiff, who purchased the suit property with full knowledge, is bound to discharge the loan dues to the Society, and if he fails to do so, the Society has no option except to bring the suit property for auction sale again.

5. The learned Judge after hearing the parties on either side dismissed the amendment petition holding that the requested amendment, if permitted, would defeat the valuable right which has accrued to the defendants. The learned Judge also found some force in the argument that the amendment is hit by limitation.

6. Indisputably, respondents 1 to 7 were advanced a loan by the eighth respondent, the Co-operative Society, and when the loan amount was not repaid, recovery proceedings were initiated against respondents 1 to 7 and a decree was passed as far back as in 2001 and in execution of the decree and award, the suit property was put in auction in 2003. It is also not in dispute that the loan amount advanced by the eighth respondent was secured by equitable mortgage created by respondents 1 to 7 by deposit of title deeds. In spite of all these facts, the suit property was purchased by the revision petitioner in the year 2006. The amendment sought for by the revision petitioner has, therefore, been rightly refused by the court below inasmuch as having regard to the pendency of the execution proceedings, where the property had already been put in auction, the remedy, if any, available to the revision petitioner is to approach the authorities before whom the execution proceedings are pending.

7. For the reason aforesaid, the impugned order refusing the amendment sought for by the revision petitioner needs no interference by this Court. The civil revision petition is accordingly dismissed. However, there shall be no order as to costs.