
(1994) 11 MAD CK 0090
In the Madras High Court

Uma Rani

APPELLANT

Vs

Hindustan Petroleum Corporation Limited

RESPONDENT

Date of Decision : 29-11-1994

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 8

Citation : (1995) 1 MLJ 428

Hon'ble Judges : Govardhan, J

Bench : Division Bench

Judgement

Govardhan, J.—Plaintiff is the appellant.

2. Averments in the plaint are as follows:

The plaintiff is the owner of the suit property having purchased the same on 29.11.1968 through her guardian mother. The mother of the plaintiff had entered into a lease agreement with M/s. Caltex India Limited on 8.8.1974. M/s. Caltex India Limited got amalgamated with the defendant with effect from 9.5.1978. M/s. Caltex India Limited was running a petrol and diesel fuelling station and a service station in the suit property. The lease agreement between the plaintiff's mother and M/s. Caltex India Limited expired on 30.6.1979. The defendant had requested the mother of the plaintiff for renewal of the lease for a further period of five years from 1.7.1979 as per their letter dated 20.11.1978. The plaintiff sent a letter stating that she does not propose to ratify the lease deed and requested vacant possession to be handed over to her. Defendant's counsel had called upon the plaintiff through her counsel to renew the lease. The plaintiff sent a reply stating that she is not ratifying the lease agreement between M/s. Caltex India Limited and the plaintiff's mother. The defendant had sent a reply containing false allegations. The lease agreement between the mother of the plaintiff and Caltex India Limited will not bind the plaintiff in any way, since she was a minor at the time of the agreement. The defendant was sending the rent till the end of June, 1979 only to the plaintiff's mother. It is only from July, 1979, the defendant is sending the rent to the plaintiff. It was refused by the plaintiff.

The demand draft sent by the defendant has been sent back by the plaintiff to the defendant. The plaintiff has filed the suit for setting aside the agreement between the mother of the plaintiff and the defendant among other grounds that she has not been made an eo nomine party to the suit document. Plaintiff is entitled to get back vacant possession and damages for use and occupation at Rs. 2,000 per month and also future mesne profits at the same rate from July, 1979 till delivery of possession of the suit properties.

3. The defendant in his written statement contends as follows: The allegation that the plaintiff purchased the suit property when she was a minor represented by her mother as guardian is not true. M/s. Caltex India Limited had been in occupation of the suit property as a tenant from 1.7.1959 as per the agreement dated 25.11.1959. The sale deed provided that the purchaser shall be entitled to collect the rent from 1.7.1969. At the request of the plaintiff's father on the ground that there is a change of ownership for the property, the lease agreement has been entered into between M/s. Caltex India Limited and the mother of the plaintiff for five years from 1.7.1969. The lease deed has provided for renewal of the same for another term on monthly rent of Rs. 500. It was as per this provision, the lease deed was executed by the plaintiff's natural guardian viz., mother. Half the rent for the entire five years was paid in one lump sum and the balance is being paid monthly. The lease deed was executed by the mother of the plaintiff for the benefit of the plaintiff and the plaintiff had enjoyed the benefits for the full period of the lease. It is therefore binding on the plaintiff. The allegation that the lease deed is not binding on her is not tenable. The allegation that the plaintiff has revoked the lease is untrue. There is no question of revocation after the expiry of the lease period. The defendant is entitled to have the lease renewed for a further period. The claim for setting aside the lease which had already expired and also for declaration that it is not binding on the plaintiff is not maintainable. The defendant has sent a suitable reply to the plaintiff's notice. The claim for Rs. 2,000 per month as damages is not tenable. The suit is therefore liable to be dismissed.

4. The defendant in the additional written statement filed, has also claimed that the lease being for the benefit of the plaintiff and she having taken the benefit, it is binding on the plaintiff and no express ratification is necessary. The defendant is entitled to the benefits of the City Tenants Protection Act which has been made applicable to all tenancies created prior to the coming into force of the Act amended in 1980 by Act 2 of 1980. The defendant is entitled to purchase the site at a value to be fixed by the Court in accordance with the provisions of the City Tenants Protection Act.

5. In the additional written statement it is also contended as follows: The allegation that the Central Government has not exercised any option u/s 7(3) of the Central Act 17 of 1977 and therefore the defendant is not entitled to ask for renewal is untenable.

6. On the above pleadings, after trial, the learned Sub Judge, Coimbatore has

dismissed the suit with costs.

7. Aggrieved over the same, the plaintiff has preferred this appeal.

8. The point for consideration is:

Whether the appellant is not liable to be evicted from the suit property?

9. C.M.P. No. 2850 of 1991 and C.M.P. No. 4344 of 1994: In C.M.P. No. 2850 of 1994, the plaintiff appellant has stated as follows: The plaintiff has filed the appeal. The plaintiff's father was alive when the mother entered into an agreement of lease on 10.9.1969 under Ex.B-1. The father died on 7.9.1984. He had no adverse interest against the plaintiff. u/s 8 of the Hindu Minority and Guardianship Act, transactions by a mother who is not the legal guardian are void and not binding on the minor. No permission was obtained from the court by the mother prior to the execution of the lease agreement. No permission of the court was obtained to execute Exs.B-1 and A-2 on behalf of the minor plaintiff. Therefore, the plaintiff wants to amend the plaint as per the details in the application. Possession of the respondent is that of a trespasser and the trial court has no jurisdiction to keep the petitioner out of her property. Therefore, the plaintiff has filed this petition to amend the plaint as detailed in the petition and the same may be ordered.

10. In the counter to this petition, the respondent contends as follows: The allegation that the lease agreement is hit u/s 8 of the Hindu Minority and Guardianship Act is not tenable and no permission is required in law from any court prior to the execution of Exs.B-1 and A-2 since they are only for a period of five years. Ex.A-2 was executed when the father was alive. The allegation that the execution of the same by the mother without obtaining permission is not valid is not tenable. No prejudice would be caused if the amendment is refused. The amendment if allowed will change the character of the suit. The petitions are therefore liable to be dismissed.

11. The point for consideration in this petition is:

Whether the plaintiff is entitled to an order in which the plaint in O.S. No. 1304 of 1979 could be amended?

12. C.M.P. No. 4344 of 1994: In this petition, the petitioner, who is a third party contends as follows: The application for amending the plaint has been filed since the plaintiff's father had no adverse interest against him and since there is no permission obtained from the court for execution of Exs.B-1 and A-2. The error in omitting to state that the lease deeds dated 10.9.1969 and 8.8.1974 were void documents was only a clerical error and not due to any wanton carelessness or negligence. No prejudice would be caused if the relief as prayed for is granted. Hence the petition for seeking permission to amend the plaint as per the details of amendment set out in C.M.P. No. 2850 of 1994.

13. The respondent in their counter contends briefly as follows: A third party to a

proceeding and a family friend cannot file an affidavit. The allegation that the amendment sought for has been omitted inadvertently and it is not due to any wanton carelessness or negligence is not correct. If the relief sought for is granted, the respondent will be prejudiced. Therefore, the petition is liable to be dismissed.

14. The point for consideration in this petition is:

Whether the amendment of the plaint sought for by the petitioner in C.M.P. No. 2850 of 1994 has to be allowed?

15. The plaintiff has filed the suit for setting aside the lease deed dated 8.8.1974 entered into between her mother and M/s. Caltex India Limited and for declaring that the defendant is not entitled to ask for a renewal of the lease term for any period as contemplated u/s 7(3) of the Central Act 17 of 1977 and to direct the defendant to hand over vacant possession of the suit properties to the plaintiff and to direct the defendant to pay the plaintiff future mesne profits from July, 1979 to date of delivery of possession and for costs. Several issues have been framed by the trial court including whether the defendant is entitled to the benefits of the Tamil Nadu City Tenants Protection Act, whether the defendant had not complied with the requirements of Section 7(3) of the Central Act 17 of 1977 and whether the defendant has no vested right and option to have the lease renewed etc. The trial court has held that the defendant is entitled to have the lease renewed for a further period on the same terms as contained in the lease deed dated 1.7.1974 by virtue of Section 7(3) of Central Act 17 of 1977 for a further period of five years from 1.7.1979 till 1.7.1984 and the defendant is entitled to put forth the same as a defence to the plaintiff's action for possession. The trial court has also held that the defendant is not entitled to the benefits under the Tamil Nadu City Tenants' Protection Act. The suit has been dismissed by the trial court on the basis of the finding given by it as to whether the defendant is entitled to have the lease renewed, u/s 7(3) of Central Act 17 of 1977. In this appeal. When the appeal was taken up for hearing, the appeal was not argued before this Court on its merits on the vital question whether the defendant is entitled to extension of the lease by virtue of Section 7(3) of the Act. The learned Counsel appearing for the appellant as well as the respondent have confined to their arguments on the petitions filed in this Court viz., C.M.P. No. 2850 of 1994 and C.M.P. No. 4344 of 1994 in which the plaintiff has sought for amendment of the plaint. Therefore, the appeal is not decided on the rival contentions of the plaintiff and the defendant in their pleadings.

16. The points in the appeal as well as C.M.P. Nos. 2850 of 1994 and 4344 of 1994: The plaintiff has filed the suit with a pleading that the lease agreement between her mother and M/s. Caltex India Limited is not binding on her and she is not bound to renew the lease and since the defendants were claiming that they are entitled to ask for renewal of the lease u/s 7(3) of the Central Act 17 of 1977, she has come forward with this suit. It is now contended by the plaintiff-petitioner in these two C.M.Ps. filed in the appellate court that the original

agreement with M/s. Caltex India Limited was of the year 1969 between her mother acting as her guardian and it was executed when her father the natural guardian was alive and when he had no adverse interest against her interest and since the agreements have been executed by a person who is not competent to execute the same on behalf of the minor, it is a void agreement and therefore the plaintiff is entitled to ignore the same and seek delivery of possession of the property from the defendant. According to the petitioner, the failure to make a plea that the agreement of the year 1969 is a void agreement is a mistake committed inadvertently and therefore, she wants to amend the plaint incorporating the said plea. The two documents under Exs.B-1 and A-2 have been executed by the mother of the plaintiff without obtaining the leave of the court when the father of the plaintiff who is the natural guardian was alive is not in dispute. The learned Counsel would argue that only to avoid technical defect, the amendment is sought and the omission to make this plea in the plaint is a mistake committed by the plaintiff at the time of drafting the plaint and the same should be allowed. The learned Counsel appearing for the respondent would argue that the plaint is silent with regard to the provisions of Section 8 of the Hindu Minority and Guardianship Act and if the petitioner is permitted to amend the plaint as prayed for in these petitions, it would give room for the cause of action itself being changed and the lease period had also expired and everything was over and it would only protract the proceedings and therefore the amendment should not be allowed. The provisions of Section 8 of the Hindu Minority and Guardianship Act are devised to protect the property of a minor, even from the depredations of his parents and it empowers only the legal guardian to alienate a minor's immovable property provided it is for the necessity or benefit of the minor or his estate and it further requires that such alienation shall be effected after the permission of the court has been obtained. Father is the natural guardian and mother could be considered as a natural guardian only if the father is not taking any interest in the affairs of the minor and acts against the interest of the minor. There is no room to hold that the father of the plaintiff was acting against the interest of the minor to uphold the lease deed executed by the mother in favour of M/s. Caltex India Limited in 1969. Further, it is also open for the defendant to take such a stand after the amendment is ordered allowing the plaintiff to make this plea u/s 8 of the Hindu Minority and Guardianship Act in order to justify that the lease deed in favour of M/s. Caltex India Limited was executed by the mother of the plaintiff in 1969 on account of the conduct of the father in not taking any interest in the affairs of the minor. But that contingency will arise only after the amendment is allowed and it is premature to decide that the stand taken by the plaintiff u/s 8 is not available to her. In this connection. I would like to refer to the decision reported in Annamalai Pillai v. The District Revenue Officer 1993 W.L.R. 828, wherein the Apex Court has held that lease of the land of a minor, executed by a minor's father for a period to go more than one year beyond the date on which minor was to attain majority is in contravention of Section 8(2) of the Act, as the lease was prohibited and was without any authority and the tenant's claim as a

cultivating tenant has to be negated. When the lease by the father who was the natural guardian itself was held as one prohibited u/s 8 of the Hindu Minority and Guardianship. Act on the ground that was for a period of more than one year beyond the date on which the minor was to attain majority, the execution of the lease by the mother during the life time of the father who is the natural guardian has to be necessarily held as one executed in contravention of the provisions of Section 8 of the Act. Therefore, the plaintiff is entitled to avoid the agreement of the year 1969 and subsequent renewals on account of the fact that they are void agreements cannot be disputed.

17. Having held that the plaintiff has got a valid ground to avoid the agreement which her mother had with the defendant's predecessor, it is now for us to decide whether the amendment of the plaint has to be allowed for the said reason. It has been held in the decision in Haridas Aildas Thadani and Others Vs. Godrej Rustom Kermani, , that the court should be extremely liberal in granting prayer of amendment of pleading unless serious injustice or irreparable loss is caused to the other side. In the decision reported in Nichhalbhai Vallabhai and Others Vs. Jaswantlal Zinabhai and Others, , it has been held that the object of the rule under Order 6, Rule 17 of CPC for allowing amendments to the plaint was to avoid multiplicity of suits, otherwise if the amendment were refused, the plaintiff would have to bring another suit. In the decision reported in Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, , it has been held as follows: It is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of the suits but also appeals and that the appeal being a continuation of the suit, new pleas are not considered and to this proposition there are a few exceptions. Sometimes it happens that the original relief claimed becomes inoperative, or the law changes affecting the rights of the parties. In such cases, the courts may allow an amendment, pleadings the changed circumstances. Sometimes also the changed circumstances shorten litigation and then to avoid circuitry of action the courts allow an amendment." In the decision reported in Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, , it has been held as follows:

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

In the decision reported in Ganesh Trading Co. Vs. Moji Ram, , it has been held as follows:

Procedural law is intended to facilitate and not to obstruct the course of

substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable the courts to determine what is really at issue between the parties and to prevent deviation from the course which litigation on particular causes must take.

In the decision reported in *Vellai Ammal and Others Vs. Chinnammal and Others*, , it has been held that a party cannot be refused relief because of some mistake, negligence, inadvertence or even infraction of the rules of procedure and the court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. When we approach the case on hand in the light of the above decisions, one thing is certain and that is the plaintiff has failed to make a plea in the original claim that her mother is not competent to execute any lease agreement with M/s. Caltex India Limited on her behalf during the lifetime of her father and that too without obtaining any leave from the court and therefore it is a void agreement from its inception and not binding on the plaintiff. The defendant's case is they are statutory tenants entitled to be in possession, A statutory tenant is a person who remains in occupation of the premises leased to him after the determination of or the expiration of the period of tenancy. He merely enjoys the protection of the law in that he cannot be turned out so long as he pays the standard rent permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal. When the occupation of the premises by the defendant is in pursuance of the agreement by the mother of the plaintiff who is not competent to execute a lease agreement in favour of M/s. Caltex India Limited it cannot be stated that M/s. Caltex India Limited was a statutory tenant and after the take-over of the said company, the defendant who remains in occupation of the premises continues to be a statutory tenant and is entitled to enjoy the protection of the law. Therefore, the amendment sought for goes to the root of the dispute. By the mistake committed by the plaintiff in not making a plea invoking Section 8 of the Hindu Minority and Guardianship Act, no prejudice or loss can be said to have been caused to the defendant in which case at least he may be stated that the plaintiff cannot seek the amendment sought for. The object of the amendment being to avoid multiplicity of proceedings, the amendment sought for by the plaintiff has to be allowed since the court should be liberal in amending in the plaint. When we consider all these aspects, I am of opinion that the contention of the respondent-defendant that the amendment if allowed would change the cause of action and the lease period had already expired is not a valid ground to reject the prayer for amendment. In fact, the contention of the respondent that cause of action would be changed is not a tenable one since the plaintiff had avoided the agreement which executed by her mother in 1974 and now she avoids the agreement executed by her mother even in 1969 on the ground that it is a void agreement. I am of opinion that the objection to the petition for amendment is without merits in the light of the

various decisions referred above. The pleading has to be amended to substantiate, elucidate and expand the pre-existing facts already contained in the original pleading. Therefore, I hold that the petitions in C.M.P. Nos. 2850 of 1994 and 4344 of 1994 are to be allowed as prayed for. When the amendment sought for by the plaintiff is allowed, as I have already observed, the appeal not being argued in this Court, the court cannot give a finding on the point at issue between the parties without further evidence and in that view, I am of opinion that the matter has to be remitted to the trial court for carrying out the amendment for giving an opportunity to the defendant to file additional written statement to frame an issue on the amended pleading, and then decide the suit afresh. I hold on the points accordingly.

18. In the result, C.M.P. Nos. 2850 and 4344 of 1994 are allowed. The appeal is allowed setting aside the judgment and decree of the trial court and the matter is remitted to the trial court for fresh disposal according to law after the plaint is amended as prayed for in C.M.P. No. 2850 of 1994. The plaintiff is directed to carry out the amendment in the trial court. The trial court shall give an opportunity to the defendant to file additional written statement in the light of the amendment made in the plaint and within 3 months from the date of receipt of this order after framing appropriate issue and giving an opportunity to both sides to let in further evidence in respect of their respective claims. In the circumstances, there is no order as to costs. Court-fees paid on the memorandum of appeal shall be refunded to the appellant.