

(2011) 12 MAD CK 0300

In the Madras High Court

Case No : C.R.P. (PD) No. 2777 of 2011 and M.P. No. 1 of 2011

Vasanth

APPELLANT

Vs

Krishnan (dead) Indradevi and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Citation : (2012) 1 CTC 352

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : V. Kannan, for the Appellant; B. Vijay, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman

1. The plaintiff in O.S. No. 270 of 2004, which was originally filed as O.S. No. 32 of 1991 on the file of the Sub Court, Poonamallee, now transferred to the file of the Additional District Munsif, Alandur, is the petitioner herein. The legal representatives of one Krishnan, who was the original defendant in the said suit, are the respondents herein.

2. The petitioner has laid the said suit against one Krishnan for declaration of her title over the suit property and for permanent injunction restraining him from erecting any superstructure over the suit property. In the said suit, the petitioner has taken out an application in I.A. No. 1915 of 2010 for amendment of the pleadings. The amendment that has been sought for by the petitioner was in respect of the boundary and the measurement. The original claim of the petitioner was in respect of 6 cents and the present claim is of an extent of 25,620 sq. ft.

3. The reason that has been set out in the affidavit in support of the application for amendment was that when the matter was posted for trial on 2.11.2010, her Advocate visited the suit property on 23.10.2010 and found that the extent of

the property is more than what is stated in the plaint. The learned Additional District Munsif, Alandur dismissed the application preferred by the petitioner on the ground that--

(a). when the suit has been filed in the year 1990 and the written statement was filed on 4.11.1991 by the deceased Krishnan pointing out that the petitioner has not given correct measurements and liner measurements and the extent of the property, the application for amendment was filed only in October, 2010. Thus, there is a considerable delay in filing the application for amendment.

(b). The amendment that has been sought for by the petitioner is barred by limitation since the petitioner who seeks for declaration of title and recovery of possession should have filed it within 12 years.

(c). If the application is entertained, it would cause injustice to the respondents and it would also take away the rights accrued to them.

The present civil revision petition is directed against the said order.

4. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

5. The suit was originally filed in the year 1990 and twice it was transferred and now, it is pending on the file of the learned Additional District Munsif at Alandur and renumbered as O.S. No. 270 of 2004. The petitioner has sought for declaration of her title and right over the suit property and for permanent injunction restraining the original defendant from erecting any superstructure in the schedule mentioned property. The schedule of property has been described as 6 cents of land in Survey No. 309 in Anakaputhur Village. It is the case of the petitioner in the plaint that originally her husband occupied the land in question in the year 1955. Later, she has acquired the same. Her further case was that on 14.2.1987, the Collector of Chengai Anna District at Kancheepuram has assigned 3 cents of land in Plot No. 82-A in favour of her husband late Ramalingam and another 3 cents of land in Plot No. 106-A in favour of one Govindasamy, who happened to be the brother of said Ramalingam. The said Govindasamy orally gifted away the property assigned in his favour, in favour the petitioner's husband Ramalingam. The said Govindasamy died in the year 1976. After the death of the said Govindasamy, the petitioner's husband Ramalingam continued to enjoy the whole property. After his death, the petitioner is in possession and enjoyment of the property.

6. While so, the petitioner filed an application for amendment. The particulars of the said amount as set out by her in the application is usefully extracted here under:-

1. To add para-4-A, after para-No. 4 in the plaint at page No. 2. 4-A. Though as per the Revenue records the plaintiff's possession is recognized by assignments in favour of plaintiff's husband and his brother only to the extent of 6 cents, the plaintiff's husband and the plaintiff had been in settled possession of the land to

the extent of 25,620 sq. ft.

2. In schedule of property portion at page No. 3 of the plaint

(i) After the words "bounded on the South by : Omits the words Sarojini Ammals land" and substitute the same by the words "Ramachandran's House".

(ii) After the words "North by" omits the words "Rajan Ammal's Land" and substitute the same by the words "Jagadeeswaran's House".

(iii) To add after the words West by "Kalmaduvuthangal" the following words "measuring on the North to South 140 sq. ft. and on the East to West 183 sq. ft. totaling to 25,620 sq. ft. within the jurisdiction of this Honourable Court.

Even the particulars of the amendment would disclose that the petitioner wants to make amendment in para 4 of the plaint and in the schedule to the plaint. When the petitioner has claimed that the Collector of Chengai Anna District, Kancheepuram has assigned 3 cents of land to her husband and another 3 cents of land in favour of one Govindasamy, the brother of her husband, it is not known how suddenly the petitioner claims right to an extent of 25,620 sq. ft. That apart, the only reason that has been made in the affidavit in support of the application for amendment is that when the suit was posted for trial, her Advocate visited the property and found that the extent of the property is more than what is stated in the plaint. Absolutely no document is forthcoming to establish the claim of the petitioner over an extent of 25,620 sq. ft. by way of an amendment when the original claim was in respect of only 6 cents.

7. That apart, as stated already, the suit has been filed in the year 1991 and the present application for amendment has been filed only in October, 2010. There is no proper explanation for the said delay. The limitation that has been prescribed for a suit for declaration and for recovery of possession is 12 years.

8. Learned counsel appearing for the petitioner relied on the decision reported in S. Syed Abubakkar and Others Vs. Sardhar and contended that boundary shall prevail over extent. That is the case where the suit was laid for specific performance of an agreement of sale. The suit was decreed by the trial Court and the same was confirmed in the appeal and the matter came before this Court by way of second appeal. This Court, in the said judgment, has held that boundary shall prevail over extent and the defendant is bound to sell whatever extent available within the said boundaries specified in the agreement of sale in favour of the plaintiff. In such circumstances, I am of the considered view that the said judgment may not come to the rescue of the petitioner.

9. Yet another decision that has been relied on by the learned counsel appearing for the petitioner is reported in Pratibha Singh and Another Vs. Shanti Devi Prasad and Another, . In the said decision, in a suit for specific performance of an agreement of sale of an immovable property, the Hon''ble Apex Court has held that the failure on the part of the plaintiffs to give correct, specific and exact description of the immovable property forming the subject-matter of suit, added

by omission on the part of the trial court to insist on compliance by the draftsman of the plaint with the rules of pleadings, has resulted in a decree which is yet to witness its full execution and satisfaction though the litigation has by this time stretched over two decades. That is the case where the plaintiff who has sought for specific performance of an agreement of sale of immovable property could not execute the decree since the property could not be identified by boundaries. The said judgment also will not come to the rescue of the petitioner.

10. The other decisions that have been relied on by the learned counsel appearing for the petitioner are reported in (2005) 13 SCC 89 - Sampath Kumar Vs. Ayyakannu and Another, s. In the said decisions, the Hon''ble Apex Court, no doubt, has held that amendment cannot be refused on the sole ground of delay or laches. However, in the present case on hand, I am of the considered view that the delay alone is not put against the petitioner. The petitioner who has claimed right over 6 cents, suddenly claims right over an extent of 25,620 sq. ft., without pointing out how the said claim is made especially in the context that the petitioner originally laid her claim over 6 cents on the basis of assignment in favour of her husband and in favour of her husband''s brother.

11. Even in the other decision that has been cited by the learned counsel appearing for the petitioner reported in Peethani Suryanarayana and Another Vs. Repaka Venkata Ramana Kishore and Others, the Hon''ble Apex Court has held that wider power that has been granted to the Court to allow the application for amendment is circumscribed by three factors viz.,

- (i) the application must be bona fide;
- (ii) the same should not cause injustice to the other side; and
- (iii) it should not affect the right already accrued to the defendants.

12. In yet another decision that has been relied on by the learned counsel appearing for the petitioner reported in 2010-1- L.W.166 - Mariyal v. Ranjitham (dead) & others is concerned, the amendment that has been sought for is in respect of the survey number alone. Hence, the said judgment also, in my considered view, may not be of any use to the petitioner.

13. Considering the overall circumstances referred to above, I am of the considered view that the petitioner has not made out any case to allow her application for amendment and the order of the Court below in dismissing her application, does not warrant any interference by this Court.

14. In fine, the order of the learned Additional District Munsif, Alandur dated 1.3.2011 made in I.A. No. 1915 of 2010 in O.S. No. 270 of 2004 is confirmed and the civil revision petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.