

Dhanabalan Vs. 1.Akkammal

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Court : Chennai

Decided On : Jun-26-2014

Judge : K.Kalyanasundaram

Appellant : Dhanabalan

Respondent : 1.Akkammal

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

26. 06.2014 CORAM THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM C.R.P.No.281 of 2008 and M.P(MD)No.2 of 2008 Dhanabalan .. Petitioner/Petitioner/Plaintiff Vs. 1.Akkammal 2.S.Savithri 3.Jeyapaul 4.Sanjeevee 5.Gunasekaran 6.Siranjeevee 7.Dhanasekaran .. Respondents/Respondents/ Defendants 2 to 8 Prayer Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order, dated 05.12.2007 passed in I.A.No.113 of 2007 in O.S.No.46 of 2005 on the file of the Additional District Judge/Fast Track Court No.1, Tuticorin. !For Petitioner : Mr.S.Subbiah ^For RR1 2, 4, 6 & 7 : Mr.S.S.Sundar For RR3& 5 : No appearance :

ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.113 of 2007 in O.S.No.46 of 2005 by the Additional District Court cum Fast Track Court No.1, Tuticorin.

2. The petitioner as plaintiff has instituted a suit in O.S.No.67 of 2002 for partition and separate possession claiming share in the suit property. The petitioner filed an application in I.A.No.74 of 2005 under Order 6 Rule 17 of the Code of Civil Procedure, 1908 seeking amendment of pleadings. The said I.A.No.74 of 2005 was dismissed by the learned Additional District Judge cum Fast Track Court No.1, Tuticorin.

3. Aggrieved by the order, the petitioner has filed a revision petition in C.R.P(MD)No.311 of 2007. This Court, after hearing both the learned counsels, allowed the Civil Revision Petition with a direction to the petitioner to take immediate steps for necessary amendments mentioned in the interlocutory Application and carry out the amendment within a period of one month from the date of receipt of this order. Subsequently, the petitioner filed an application in I.A.No.113 of 2007 seeking permission of the Court to carry out the amendment in terms of the order passed in C.R.P(MD)No.311 of 2007. The learned Additional District Judge, Tuticorin closed the petition recording the following endorsement Heard. The order passed in C.R.P.No.311 of 2007 filed. Regarding the contention, the Court need not go into that aspect at this stage. Petition is closed. Challenging the order, the present Civil Revision Petition is filed.

4. Heard Mr.S.Subbiah, learned counsel appearing for the petitioner and Mr.S.S.Sundar, learned counsel appearing for the respondents 1, 2, 4, 6 and 7. Despite service of notice, the respondents 3 and 5 have not chosen to appear and contest the petition.

5. The learned counsel appearing for the petitioner submitted that the learned trial Judge has not given any reason as to why the petition for amendment should not be allowed and the order is a non-speaking one, so it is liable to be set aside.

6. Per contra, the learned counsel appearing for the respondents 1, 2, 4, 6 and 7 submitted that the order in the revision was passed on 21.06.2007 with a direction to the petitioner to approach the trial Court to carry out the amendment within a period of one month from the date of receipt of this order. But, however, the petitioner has filed a copy application only on 27.11.2007, which shows that only after five months of the order passed in the revision petition, the petitioner has filed

the application for certified copy of the order. The learned counsel further submitted that even if the amendment is allowed to be carried out, the limitation for the proposed amendment has to be taken only from the date of carrying out the amendment and payment of Court fee.

7. Indisputably, this Court in C.R.P(MD)No.311 of 2007 has allowed the amendment petition filed by the petitioner in I.A.No.74 of 2005 and directed the petitioner to make necessary amendment within a period of one month from the date of receipt of this order. In the application filed by the petitioner to carry out amendment, the petitioner has stated that the order copy was not received by him nor by the Court and in the meanwhile, the respondents filed the application to review the order, in which, the petitioner received a notice and only thereafter, they came to know that the counsel has not applied for a copy of that order and immediately an application was filed for certified copy of the order and it was obtained on 28.11.2007, which was received by the petitioner on 01.12.2007. The petitioner has further stated that within the time granted by this Court in the earlier revision petition, he has filed the application to carry out the amendment, but, however, the learned Additional District Judge, rejected the petition.

8. It is to be noted that the order copy in C.R.P(MD)No.311 of 2007 was received by the counsel on 28.11.2007. The order is said to have reached the petitioner on 01.12.2007 and the petition for amendment was filed on 05.12.2007. There is some delay in filing the application for certified copy of the order, which is explained by the petitioner, but, however, the application to carry out amendment was filed before the trial Court within one month, as per the condition in the Civil Revision Petition. Hence, in my considered opinion, the impugned order is not sustainable in law and hence, it is set aside.

9. The next contention of the learned counsel for the respondents 1, 2, 4, 6 and 7 is that amendment has to be given effect only from the date of carrying out the amendment.

10. This Court, while allowing the amendment application, has given permission to the petitioner to carry out the amendment within one month from the date of receipt of the said order. If the application is filed within one month from the date of

receipt of a copy of this order, as per the earlier direction of this Court, the learned trial Judge has to carry out the amendment and proceed with the suit in accordance with law. It is open to the respondents to raise all the defence available to them and the learned trial Judge shall decide the suit in accordance with law.

11. In fine, the Civil Revision Petition is allowed and the order passed in I.A.No.113 of 2007 in O.S.No.46 of 2005 by the Additional District Judge/Fast Track Court No.1, Tuticorin is set aside. No costs. Consequently, connected Miscellaneous Petition is closed. To The Additional District Judge/ Fast Track Court No.1, Tuticorin.

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