

**Kaleeswaran Vs. Uma**

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**Court :** Chennai

**Decided On :** Oct-29-2015

**Judge :** D. Hariparanthaman

**Appeal No. :** C.R.P (PD) No. 3291 of 2015 & M.P. No. 1 of 2015

**Appellant :** Kaleeswaran

**Respondent :** Uma

**Judgement :**

(Prayer: Civil revision petition has been filed under Article 227 of the Constitution of India against the order and decree dated 7.2.2015 made in I.A.No.416 of 2014 in O.S.No.93 of 2007 on the file of the learned Principal District Judge, Villupuram.)

1. The revision petitioner is the 10th defendant in O.S.No.93 of 2007 on the file of the learned Principal District Judge, Villupuram. The respondent is the plaintiff therein. It is a partition suit. The plaintiff claims 6/15th share in the suit schedule property. The revision petitioner purchased item No.33 of the suit schedule property and hence, he was impleaded as a defendant.
2. The revision petitioner filed a written statement and in para 6 of the written statement, it was pleaded that the Will dated 22.10.2001 was executed by Varadarajalu in favour of defendants 2 and 3 and the revision petitioner purchased the property from defendants 2 and 3.

3. According to the revision petitioner, he found that the date of the Will was wrongly mentioned in the written statement as 22.10.2001 instead of 4.4.2002. Hence, he filed an application in I.A.No.416 of 2014 in O.S.No.93 of 2007 under Order 6 Rule 17 C.P.C., to amend the date of the Will as 4.4.2002 in the place of 22.10.2001, wherever it occurs.

4. But, the Trial Court, by order dated 7.2.2015, rejected the said application. Hence, this revision petition.

5. When the matter came up on 18.8.2015, this Court passed the following order:-

The revision petitioner is the 10th defendant in O.S.No.93 of 2007 before the Principal District Court, Villupuram. It is a partition suit. The plaintiff claimed 6/15th share in the suit schedule properties.

2. The revision petitioner, who is the 10th defendant bought Item No.33 of the suit schedule properties. Hence, he was impleaded as a defendant.

3. The revision petitioner filed a written statement. In paragraph 6 of the written statement, it was pleaded that Will dated 22.10.2001 was executed by Varadharaju in favour of defendants 2 and 3 and the revision petitioner purchased the property from defendants 2 and 3.

4. According to the petitioner, later, he found that the date of the Will was wrongly mentioned as 22.10.2001 instead of 04.04.2002. Hence, he filed an application in I.A.No.416 of 2014 in O.S.No.93 of 2007 to amend the date of the Will as 04.04.2002 in the place of 22.10.2001, wherever it occurs.

5. The Trial Court, by an order dated 07.02.2015 in I.A.No.416 of 2014 in O.S.No.93 of 2007 rejected the said application. Hence, this revision petition.

6. The Trial Court, while rejecting the said application observed that there were two Wills dated 22.10.2001 and 04.04.2002 executed by Varadharajulu Chettiar, but there was no pleading by the petitioner about the Will dated 04.04.2002 in the written statement and hence, it came to the conclusion that the amendment sought for by the petitioner was only an afterthought.

7. The learned counsel for the petitioner has submitted that out of the two wills dated 22.10.2001 and 04.04.2002, the Will dated 04.04.2002 was executed in favour of Defendants 2 and 3 by Varadharajulu Chettiar, in respect of Item No.33 of the suit schedule properties. The revision petitioner derived title to Item No.33 by a sale deed executed by D2 and D3 in his favour, based on the Will dated 04.04.2002. Hence, the amendment to the said effect has to be incorporated in the written statement. No prejudice would be caused to the plaintiff, if such amendment is carried out. The learned counsel has also submitted that P.W.1 has to be cross examined.

8. Notice of Motion returnable by 16.09.2015. Private Notice is also permitted. There shall be an order of interim stay till then. Post on 16.09.2015."

6. Now, after notice, the respondent / plaintiff has appeared through counsel.

7. Heard both sides.

8. The learned counsel appearing for the revision petitioner has submitted that the nature of amendment should be taken into account by the Trial Court and the same cannot be technically rejected as the amendment would not cause serious prejudice to the respondent/ plaintiff. Further, he has submitted that the revision petitioner is a third party purchaser of the properties involved in the partition suit and hence, the same should also be taken into account by the Trial Court.

9. On the other hand, learned counsel appearing for the respondent / plaintiff has vehemently contended that no due diligence was shown by the revision petitioner as the revision petitioner filed the application under Order 6 Rule 17 C.P.C. after commencement of the trial. Hence, as per the proviso to Order 6 Rule 17 C.P.C., the Trial Court has rightly rejected the application on the ground that no due diligence was shown by the revision petitioner.

10. I am not in agreement with the submission made by the learned counsel appearing for the respondent / plaintiff. In this case, the amendment sought for by the revision petitioner is only to change the date of the Will. If such an amendment is sought, in the normal course, the same has to be allowed. Now, the suit is

posted for examination of plaintiff's side witness.

11. As per Order 6 Rule 17 C.P.C., amendment application could be made at any stage of the proceeding. However, the proviso restricts the Trial Court to make amendment if trial has commenced. After the trial has commenced, as per the said proviso, if the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial, the Trial Court can allow the amendment. It is well settled that the proviso cannot be narrowly interpreted and the same cannot take away the very purpose of the provisions of the main section.

12. In this case, particularly when the amendment sought for is, as stated supra, for changing the date of the Will, the Trial Court ought to have allowed the application instead of rejecting it on the ground that no due diligence was shown by the revision petitioner as alleged by the respondent / plaintiff. Hence, I have no hesitation to set aside the order of the Trial Court.

13. In the result, the order of the learned Principal District Judge, Villupuram, dated 7.2.2015 made in I.A.No.416 of 2014 in O.S.No.93 of 2007 is set aside and the civil revision petition is allowed. However, the respondent / plaintiff will be given time to file any amended plaint pursuant to the aforesaid amendment made in the written statement. Further, taking into account the fact that the suit is of the year 2007, the Trial Court is directed to pass preliminary decree on merits and in accordance with law in O.S.No.93 of 2007 pending on its file, if it comes to the conclusion that the plaintiff in that suit has right over the properties and if he comes to the conclusion that the plaintiff has no right over the properties, the said suit would be rejected, within a period of nine months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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