

Krishnan Vs. Suseela Narayanan and Others

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Court : Chennai

Decided On : Dec-11-2015

Judge : The Honourable Ms. Justice R. Mala

Appeal No. : C.R.P(PD).Nos. 1368 & 1369 of 2011 & M.P.No. 1 of 2011

Appellant : Krishnan

Respondent : Suseela Narayanan and Others

Judgement :

(Prayer:- Civil Revision Petitions are filed under Article 227 of Constitution of India, against the fair and decreetal order dated 03.03.2011 in I.A.Nos.256 and 211 of 2011 in O.S.No.386 of 2004 on the file of the Additional District Munsif Court, Alandur.)

Common Order

1. The Civil Revision Petitions are filed against the fair and decreetal order dated 03.03.2011 in I.A.Nos.256 and 211 of 2011 in O.S.No.386 of 2004 on the file of the Additional District Munsif Court, Alandur.

2. The revision petitioner herein as a plaintiff filed a suit in O.S.No.386 of 2004 for a declaration of plaintiff's title over the B schedule cultivable land and consequential injunction restraining the defendants from interfering with the plaintiff's possession of the B schedule land and also for declaration that the

plaintiff is entitled to easementary right of way over the C schedule property and for permanent injunction. The defendants filed a written statement and contesting the same. When the suit was posted for argument, the revision petitioner/plaintiff filed an application in I.A.No.256 of 2011 for amending the plaint for recovery of possession in respect of B schedule property instead of declaration of title and injunction and also filed another application in I.A.No.211 of 2011 for reopen the case for the purpose of filing an amendment application. The trial Court, after hearing both sides, dismissed the applications, against which, the plaintiff has preferred the revisions.

3. Learned counsel for the revision petitioner/plaintiff submits that it is true, applications have been filed after commencement of trial and when the suit was posted for argument. The revision petitioner/plaintiff has filed a suit for declaration of title and injunction in respect of B schedule property. Without issuing notice to him, the defendants 3 and 4 have granted patta in favour of the defendants 1 and 2 and the plaintiff came to know the same only at the time of cross-examination. Immediately, he filed the applications for reopen the case and amending the plaint. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revisions.

4. Resisting the same, learned counsel for the respondents 1 and 2 submits that when the matter was posted for argument, the present applications have been filed by the revision petitioner/plaintiff. After amendment in the Civil Procedure Code, once trial has been commenced, amendment shall not be allowed unless he proved that as to why he did not file the amendment application before the commencement of trial and also with due diligence, he is unable to collect the material for amendment. He further submits that in para-5 of the affidavit filed in support of the application in I.A.No.256 of 2011, it was stated that the defendants 1 and 2 filed their documents namely patta etc., only when D.W.1 went into box. The Tahsildar had granted patta without notice to me or to my vendor who was having patta. Hence, I am advised to seek amendment of the plaint seeking recovery of possession in the place of injunction. It shows that the revision petitioner/plaintiff did not assign any valid reason for amending the plaint. In the written statement itself, it was specifically mentioned that the defendants 1 and 2

had purchased the suit property from one Karpagammal, who is the predecessor in title and they have been enjoying the suit property and cultivating the land. The written statement was filed in the year 2009, but the plaintiffs have filed the applications for reopen and amendment only in the year 2011. So the revision petitioner/plaintiff had filed these applications belatedly only with a view to drag on the proceedings. Further, if the amendment sought for is allowed, nature of the suit will be changed. To substantiate his arguments, he relied upon the decision of this Court reported in 2012 (5) CTC 37 (Minor Balakumaran, through his natural guardian, next friend and father, Gnanasoundiran v. Gunasekaran). Therefore, he prayed for dismissal of the revisions.

5. Heard the learned Government Advocate appearing for the respondents 3 to 5.

6. Considered the rival submissions made on both sides and perused the materials available on record.

7. The revision petitioner herein as a plaintiff filed the suit for the aforesaid reliefs stating that one Bhuvaneswari and her children owned A schedule lands measuring 46 cents, from whom, the revision petitioner purchased a portion of A schedule land, the southern portion is measuring 38 = cents, which is described under B schedule in the suit property and that the revision petitioner/plaintiff is in possession and enjoyment of the B schedule property. Since the respondents 1 and 2/defendants 1 and 2 attempted to interfere with the plaintiff's right of using C schedule as a common pathway, the revision petitioner was constrained to file the suit for declaration of title in respect of B schedule property and also for injunction.

8. Admittedly, the suit was filed in the year 1999, subsequently, it was transferred to the District Munsif Court, Alandur and renumbered as O.S.No.386 of 2004. Written statement has also been filed in the year 2009. But the applications for reopen the case and amend the plaint were filed in the year 2011 that too when the suit was posted for arguments.

9. It is pertinent to note that in the written statement itself, the respondents/defendants 1 and 2 have raised a plea that predecessor in title of the plaintiff has no right over the property, after Inam Abolition Act, came into effect.

The Assistant Settlement Officer, after inspecting the lands, granted patta infavour of one Karpagammal, from whom, the defendants 1 and 2 purchased the property. But whereas the revision petitioner/plaintiff has stated that he has purchased the property from one Bhuvaneswai, who got the same from her mother Sornammal under the settlement deed. Further, it was stated that neither Buvaneswari nor the plaintiff has right over the property. The defendants 1 and 2/respondents 1 and 2 herein have been in possession and enjoyment of the suit property and they are cultivating the lands. Admittedly, the suit property is a agricultural land. Now the amendment sought for is declaration of plaintiff's title over the B schedule property and for recovery of possession of B schedule property.

10. The main argument advanced by the learned counsel for the revision petitioner/plaintiff is that without issuing notice to him, the Government officials viz., third and fourth defendants granted patta in the name of the first and second defendants and the documents were marked. When D.W.1 was in witness box, the revision petitioner/plaintiff came to know that the property is in possession and enjoyment of the respondents 1 and 2/defendants 1 and 2. Therefore, the revision petitioner/plaintiff sought for amending the plaint for recovery of possession instead of injunction to avoid multiplicity of proceedings.

11. As already stated that the written statement has been filed in the year 2009, in which, it was stated that predecessor in title of the plaintiff has no right over the suit property, after Inam Abolition Act, came into existence. So Assistant Settlement Officer has granted patta in the name of Karpagammal, from whom, the defendants 1 and 2 purchased the property.

12. The only point to be decided is that whether the amendment sought for by the revision petitioner/plaintiff is liable to be allowed? As already stated that the suit property is a agricultural land and the suit has been filed for declaration of title and injunction. If really, the revision petitioner/plaintiff is in possession and enjoyment of the suit property, he may very file the documents to prove his legal possession. But after filing of the revenue records by the defendants, he sought for amendment to amend the prayer for recovery of possession. So the argument advanced by the learned counsel for the revision petitioner is unacceptable. Since the suit property

is not a vacant site and it is an agricultural land, if the revision petitioner/plaintiff dispossessed by the defendants, immediately, he can file the applications. Without doing so, after suit was posted for arguments, he has come forward with the present applications for reopen the case and amendment belatedly, only with a view to drag on the proceedings.

13. On perusal of the affidavit filed in support of the application, the revision petitioner/plaintiff has not stated that with due diligence, he was unable to collect the material for amendment. Under such circumstances, the revision petitioner/plaintiff is not entitled for amending the plaint at this stage. The trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petitions deserve to be dismissed and they are hereby dismissed.

14. In the result, the Civil Revision Petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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