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Court : Chennai

Decided On : Mar-02-2017

Judge : The Honourable Mrs. Justice Pushpa Sathyanarayana

Appeal No. : CRP PD No. 2855 of 2014 & M.P. No. 1 of 2014

Appellant : Kaveri

Respondent : Jayaraman and Another

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 10.12.2014 passed by the learned District Munsif, Madurantakam, Kancheepuram in I.A.No.1656 of 2013 in O.S.No.200 of 2010.)

1. The first defendant is the revision petitioner. Challenging the order passed by the Court below in allowing the application filed by the first respondent/plaintiff under Order 6 Rule 17 Code of Civil Procedure seeking amendment of plaint, the present revision has been preferred.

2. The plaintiff and the second defendant are brothers. They both partitioned their ancestral properties between them. While so, to the surprise of the plaintiff, the second defendant has sold the portion of the property allotted to the plaintiff's share to the first defendant vide document No.1681 of 2001, without his knowledge and that too, when he is in possession of the same. Hence the suit was filed seeking declaration and permanent injunction. Pending suit, the plaintiff filed

an application in I.A.No.1656 of 2013 seeking amendment of the plaint to include the prayer for delivery of possession. The said application was allowed by the Court below. Being aggrieved by the said order, the first defendant, who is the purchaser, is before this Court.

3. Heard the learned counsel for the petitioner and the learned counsel for the first respondent. Despite service being effected, there is no representation on behalf of the second respondent.

4. It is contended by the learned counsel for the revision petitioner that the Court below has erroneously allowed the application seeking amendment of plaint when the first respondent/plaintiff has not proved that despite his due diligence he could not file the amendment application before the commencement of trial. It is further contended that the Court below ought not to have allowed the application when the trial in the suit was over and at the stage, when the judgment was reserved. He would further draw the attention of this Court to the fact that the Court below has not considered the aspect of limitation, when the plaintiff for the first time has raised the plea of possession. Accordingly, he prayed for setting aside the order passed by the court below.

5. Per contra, the learned counsel for the first respondent/plaintiff contended that the Court below only to avoid multiplicity of proceedings has allowed the application. It is further stated that since the suit property was an ancestral property, the Adangal still stands in the name of the second defendant, even though the suit properties were partitioned between them. Hence, in the event of the Court coming to the conclusion that the defendants are in possession of the property, it will be difficult for him to recover possession and as contended by the revision petitioner, limitation aspect would not arise. Therefore, the above application was filed, which was correctly allowed by the Court below, warranting no interference in this revision.

6. Though it is pointed out by the learned counsel for the revision petitioner that after the Amendment Act 22 of 2002, the proviso has been introduced only to curb the amendment being allowed, after the trial is commenced, but when the Court comes to the conclusion that inspite of due diligence, the party could not have

raised the matter before the commencement of the trial, the discretion is given to the Court. Nevertheless no precise formula can be laid down regard being had to the concept of judicial discretion, yet the conscious effort for achieving the consistency should be made. There is a tendency to perceive delay as a non serious matter. The Court has to see that the parties do not resort to dilatory tactics but to seek their remedy promptly.

7. In the case on hand, the suit is being one for declaration of title, the consequential relief of recovery of possession has to be added. Since the plaintiff has not asked for the same, the application seeking to amend the plaint was filed, which was correctly allowed by the Court below. However, as the application has been filed when the suit is reserved for judgment, the Court below is directed to frame an issue with regard to the limitation and answer the same.

8. Accordingly, this Civil Revision Petition is disposed of with a direction to the learned District Munsif, Madurantakam, Kancheepuram to frame an issue with respect to the question of limitation on the amendment in O.S.No.200 of 2010 and decide the same. However, it is made clear that no further evidence is allowed and only further arguments alone is permitted. No costs. Consequently, the connected miscellaneous petition is closed.

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