

Selvaraj Vs. Krishnaswamy

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Court : Chennai

Decided On : Oct-05-2016

Judge : S.M. Subramaniam

Appeal No. : Civil Revision Petition No. 396 of 2012 & M.P.No. 1 of 2012

Appellant : Selvaraj

Respondent : Krishnaswamy

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 31.03.2011 passed in I.A.No.221 of 2010 in O.S.No.328 of 2000 on the file of the learned District Munsif cum Judicial Magistrate, Kattumannarkoil.)

1. This civil revision petition is filed against the fair and decreetal order dated 31.03.2011 passed in I.A.No.221 of 2010 in O.S.No.328 of 2000 on the file of the learned District Munsif cum Judicial Magistrate, Kattumannarkoil.

2. The petitioner is the plaintiff in O.S.No.328 of 2000 and the suit was filed for permanent injunction. The suit was filed in the year 2000 and after a lapse of ten years, the plaintiff filed an application in I.A.No.221 of 2010 seeking to amend the plaint schedule property.

3. The contention of the learned counsel for the petitioner is that in the plaint schedule property, it was mistakenly stated as Eastern side of the property instead of Western side . It is further stated that the Eastern portion of the property was retained by the plaintiff and the Western portion of the property, measuring to an extent of 20 ft, and 95 ft., was sold to the first defendant. The Court below, after considering the facts and circumstances of the case, dismissed the application filed for amendment on 31.03.2001, stating that the reasons given by the petitioner are not acceptable for amending the suit schedule property and if the application is allowed, it will change the nature of the suit and the same will introduce the new cause of action. As against the dismissal order passed by the trial Court in I.A.No.221 of 2010, the revision petitioner filed the present civil revision petition.

4. Further, the learned counsel contended that the two reasons stated by the Court below are unacceptable on the ground that no new cause of action will arise on amendment of the plaint and the property mentioned in the plaint and the application to amend the plaint is one and the same and a portion of the property only was sold to the first defendant. The portion of the property sold to the first defendant was also clearly stated in the plaint averments and therefore, it is very clear that the suit schedule property was mistakenly described in the suit.

5. Moreover, the learned counsel contended that the Amended Act of the Code of Civil Procedure has come into force on 01.07.2012 and the suit was filed prior to the commencement of the Amended Act. Hence, the conditions stipulated in the Amended Act cannot be applied for the Amendment application and as far as the amendment application is concerned, the Old Act has to be applied.

6. In support of his contentions, the learned counsel for the petitioner relied on a decision of this Court in RETHINAM ALIAS ANNA SAMUTHIRAM AMMAL AND OTHERS, [2005 (3) CTC 321] and the relevant portion in paragraph No.6 of the said case reads as follows:

the provisions of Order 6, Rule 17, which had been omitted by Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and which had been inserted by Section 7 of the Code of Civil Procedure (Amendment) Act, 2002 shall not apply to in respect of any pleadings filed before the commencement of Section 16 of the

Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of the Code of Civil Procedure (Amendment) Act, 2002. As already indicated, the Code of Civil Procedure (Amendment) Act, 1999 and the Code of Civil Procedure (Amendment) Act, 2002 came into force with effect from 1.7.2002. From the bare reading of the provisions contained in Section 16(2) (b) of the Code of Civil Procedure (Amendment) Act, 2002, it is clear that such amended provisions as contained in proviso shall not apply to in respect of any pleadings filed before the commencement of the amended Code. Pleadings in, this context obviously include the plaint and written statement. Therefore, in respect of the plaint or written statement filed before 1.7.2002, the proviso to Order 6, Rule 17 would have no applicability.

7. This Court, while arriving at the conclusion, stated *supra* held that the decision rendered in *P.SUBBA NAICKER V. VELUCHAMY NAICKER*, (2004 (2) CTC 742), did not refer to repeals and savings clause contained in the Amendment Act of 1999 and 2002 of the Code of Civil Procedure. Therefore, the decision held earlier by this Court is *per incuriam* and accordingly, the provisions of the Amended Act of Code of Civil Procedure cannot be applied for amendment application filed prior to 01.07.2002.

8. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

9. It is seen from the records in civil revision petition that notice of motion was ordered by this Court on 07.08.2012. Notice was served on the respondents and their names were also printed in the cause list today. Despite service of notice and their names having been printed in the cause list, the respondents have not chosen to appear before this Court and they remained absent.

10. In the light of judgment in *RETHINAM ALIAS ANNA SAMUTHIRAM AMMAL AND OTHERS*, [2005 (3) CTC 321] (cited *supra*), the reasons stated by the Court below that the amendment will change the nature of the suit and will introduce the new cause of action are untenable and the same cannot be accepted. Accordingly, the order dated 31.03.2011 passed in I.A.No.221 of 2010 in O.S.No.328 of 2000 by the learned District Munsif and Judicial Magistrate, Kattumannar Koil, is set

aside.

11. Considering the fact that the suit is of the year 2000 and already 16 years have lapsed, the learned District Munsif and Judicial Magistrate, Kattumannar Koil is directed to take up the suit and dispose of the same as early as possible, preferably within a period of six months from the date of receipt of a copy of this order.

12. In the result, the civil revision petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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