

Kumarasami Pillai Vs. Palani

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Court : Chennai

Decided On : Jan-03-1992

Reported in : AIR1992Mad318

Judge : K.M. Natarajan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 10 - Order 6, Rule 17

Appeal No. : C.R.P. No. 2969 of 1991

Appellant : Kumarasami Pillai

Respondent : Palani

Advocate for Def. : L. Padmanabhan, Adv.

Advocate for Pet/Ap. : V. Rahavachari, Adv.

Judgement :

ORDER

1. This revision is directed against the dismissal of the application for amendment of the plaint. It is seen that the petitioner herein has filed a suit for declaration of title and for recovery of possession on the allegation that the suit property originally belonged to his mother by virtue of purchase from one Adam Sahib and she was in possession till her death which took place 50 years ago. According to him, after the demise of his mother, himself and his two brothers and two sisters

were jointly enjoying the property. At the time of drafting the plaint, it was stated that after the death of his mother, he and his brothers were enjoying the property as they became entitled to the property as heir of Manickammal. He filed the suit for himself and on behalf of his brothers. In the prayer column, the declaration has to be sought for in favour of the plaintiff, his brothers and two sisters and since it is omitted to be included in the plaint, the amendment is absolutely necessary, otherwise, he will be prejudiced. He also submitted that if the amendment is not allowed, there will be several litigations and there will be multiplicity of proceedings. Hence he prayed for amendment of the plaint for including the names of his two sisters besides his two brothers as the successors after the death of his mother to the suit property.

2. The said application was resisted by the respondent-defendant. It was contended that the suit was filed in the year 1980 and the present application for amendment was filed in 1991, after 11 years, when the suit is in the stage of part-heard. Even in the written statement filed in 1980 it has been clearly brought out to the notice of the petitioner that the present suit filed by the plaintiff was not maintainable and he alone is not entitled to the declaration sought for. Having kept quiet for 11 years, he has come forward with the application and as such the petition has to be dismissed on the ground of laches. It is stated that as per the plaint allegations, the suit property belongs to the mother of the petitioner and she died long ago and hence the petitioner ought to have impleaded all those who are entitled to share in the property. Necessary and proper parties have not been impleaded. In the plaint though the petitioner referred that the petitioner-plaintiff filed the suit for himself and on behalf of his two brothers, in the relief column it is not stated that the property belongs to the plaintiff and his two brothers. The petition for amendment of the plaint is filed only to protract the proceedings. The address of the proposed parties has not been described properly, that there is no joint family, that the petitioner cannot represent the other party and that there is no prayer to implead the proposed parties to the suit even in the petition for amendment of the plaint and as such, the petition has to be dismissed.

3. The trial Court dismissed the application holding that even though the petitioner-plaintiff was fully aware of the fact that his brothers and sisters are also entitled to

share, he failed to take steps from the year 1981 and that the petition is liable to be dismissed on the ground of delay. It also found that it was brought in evidence that the mother died about 50 years ago and that the petitioner and his brothers have been enjoying the properties and that he has got two sisters. In the circumstances it was held that there was delay in filing the petition and consequently the petition has been dismissed. Incidentally it came to the conclusion that the petition is filed only to protract the proceedings.

4. It is not in dispute that the suit property belonged to the mother of the plaintiff and that she died about 50 years ago leaving behind the plaintiff, his two brothers and 2 sisters as her children. The suit was filed in 1980. The suit was filed by the plaintiff alone for himself and on behalf of his brothers. The contention of the defendant is that proper parties have not been impleaded and that he has perfected title by adverse possession. The suit was filed for declaration of title and recovery of possession. It is well settled that for proper adjudication of the case, all the proper parties are necessary. The petition for amendment is filed in 1991. The mere fact that there was delay in filing the petition is not a ground to reject the petition. When once it is found that proper parties have not been added in the suit, they have to be added for proper adjudication of the case. The court below has chosen to reject the petition on the ground of delay. The delay can be compensated by imposing heavy costs. The learned counsel for the respondent submits that the mother of the petitioner died about 40 years ago and as per the Act prevailing, only the sisters are entitled and the respondent has been in possession for more than 20 years and has perfected title by adverse possession and if the petitioner is permitted to amend the plaint, the respondent will be put to hardship. It is to be noted that even if the respondent wants to claim adverse possession, he can claim adverse possession only against the real owner. In view of the stand taken by the respondent that the sisters of the petitioner are entitled to a share and they are also proper parties to the suit, in the interest of the defendant also the present amendment is necessary. The amendment is sought for permitting the petitioner to make certain clarification in the pleadings to the effect that the petitioner is suing not in his individual capacity but as manager of the family consisting of his brothers and sisters. There is no question of any change in the cause of action or in the nature of the suit. The only ground on which the

petition can be dismissed is delay in filing the petition. But, the delay in the circumstances of the case, in my view, can be compensated. On that ground alone the rejection made by the court below is not proper and the order is liable to be set aside.

5. In the result, the revision is allowed, the order of the court below is set aside and the application I.A. No. 917 of 1991 is allowed, on the condition of the petitioner paying a sum of Rs. 300/- to the respondent within four week from today, failing which the application I.A. No. 917 of 1991 shall stand dismissed. The respondent is entitled to file an additional written statement and the rights accrued to the parties will not be prejudiced by virtue of the amendment. No order as to costs.

6. Revision allowed.

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