

Chinnayyan Vs. Jayaraman

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SooperKanoon Citation : sooperkanoon.com/780403

Court : Chennai

Decided On : Jan-31-1996

Reported in : AIR1996Mad408

Judge : N. Arumugham, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Orders 8, Rule 6 - Order 18, Rule 1

Appeal No. : Civil Revision Petition No. 1655 of 1995

Appellant : Chinnayyan

Respondent : Jayaraman

Advocate for Def. : V. Prabhakar, Adv.

Advocate for Pet/Ap. : Hema Samptha, Adv.

Judgement :

ORDER

1. Heard, while seeking the admission of this revision, the order passed by the learned Additional District Munsif, Cuddalore, in I. A. No. 482 of 1995 in O.S. 557 of 1993; filed under Section 151 of the Code of Civil Procedure, directing the defendant to adduce evidence first to prove his case with reference to the relief of declaration asked for in the written statement, is being challenged, for want of its legality and propriety.

2. It is stated that the suit property is a land allotted to the share of the respondent/plaintiff who filed the suit O.S. No. 557 of 1993 before the District Munsif's Court, Cuddalore for the relief of bare injunction, restraining the defendant who is the revision petitioner herein and his men and servants from forming a road in the suit property on the ground that the revision petitioner with the aid of his men, is making every effort to do so. The said allegation is being resisted by the defendant by filing a written statement contending inter-alia that though the land in question was admitted to have been allotted to the plaintiff/respondent, since the defendant is using the suit property to have an a cess, as easement of necessity, the defendant is entitled to have a road to be formed and that therefore, he claimed a prayer for declaration of his right to form a road with a view to have an access to take catties and carts to his property through the suit property. It is, thus a counter claim has been raised in the written statement and to get adjudicated upon the same, it is seen that the defendant has paid proper Court-fee also.

3. In the context of the pleas taken on behalf of both the parties, three issues have been framed by the trial Court. The first one is whether the defendant is entitled to the declaration of his right to form a road in the suit property as prayed for, and the next one is pertaining to the relief asked for by the plaintiff, viz. perpetual injunction and the third one is with regard to the, relief, if any, that are made available to the plaintiff in the suit. When the suit ripe for trial, this petition was filed on behalf of the plaintiff, asking the defendant to adduce evidence first, with regard to the first issue. After having heard both the parties, learned Additional District Munsif has accepted the plea of the plaintiff and consequently, passed the impugned order, directing the defendant to begin with the case and adduce the evidence first, instead of the plaintiff. Aggrieved at this, the revision is sought to be admitted for the purpose of canvassing the said order.

4. On ordering notice of motion, the respondent entered appearance and accordingly, I have heard the Bar for the respective parties for and against the impugned order. The Bar for the revision petitioner contended that in as much as the relief asked for by the plaintiff is one for bare injunction, restraining the defendant viz., the Revision petitioner and his men from interfering into the suit property for the purpose of forming a road therein and no more relief has been

claimed, the impugned order passed by the trial Court, directing the defendant to take up the case and adduce evidence the context of the Counter-claim made in the written statement is not correct and that therefore, this Court's revisional jurisdiction is sought to be invoked. To controvert the said contention, it was argued that in so far as the suit property is concerned, the title of the same has not since been disputed and a right to form a road is sought to be declared in the counter-claim, by the defendant and the first issue has been framed to that effect and so, the legal onus lies very heavily upon the defendant and that therefore, the impugned order passed by the trial Munsif, is to be justified. It is, thus the admission of the revision was opposed.

5. It was the endeavour of Mr. Prabhakar, learned counsel appearing for the respondent/plaintiff to say that based on the specific plea taken by the defendant in the written statement that he is entitled to form a road in the suit property to have an access to his land, for the purpose of taking cattle and carts, as he is doing since the date of partition and since an issue has been framed in the trial Court to that effect, placing reliance on O. 8, R.6 and O.18, R. 1 of the Code of Civil Procedure, initial burden lies upon the defendant to prove and that therefore, the trial Court was justified in passing the impugned order, directing the defendant to begin with the legal evidence, since this position was controverted, I have to probe this aspect in the light of the two reliefs asked for, one in the suit and the another in the written statement under the nomenclature of counter-claim. Admittedly, there is vast distinction between the legal concept of the relief for bare injunction and the latter relief of declaration of one's right to form a road. The former one would mean to restrain a person from doing a particular thing by means of passing an order by a Court of law and the latter one would mean to declare the right or interest of one in a property by means of a decree by a Court of law. In so far as the meaning of the two concepts above referred to are concerned, there is no controversy or dispute among the Bar for the respective parties. So far as the suit property is concerned, it is admitted that it has been allotted to the plaintiff under a deed of partition in the year 1991 and similarly a land adjacent thereto was allotted to the defendant. As Mr. Prabhakar, learned counsel for he respondent pointed out, a portion of the property described under Schedule-D in the partition deed had been earmarked as common land for using

the same as common pathway for taking carts. While so, it was the claim made by the defendant in the written statement that he is entitled to form a road all along the property allotted to the plaintiff in the partition deed. The plaintiff's claim, as specifically spelt out in the plaint seems to be that since the date of partition, he has been allowing the defendant to use his land which was allotted to him in the partition for the last five years, for the purpose of access. In so far as the land allotted in the partition to the parties concerned, it is not disputed and controverted, and the defendant is allowed to use the land of the plaintiff for the purpose of ingress and egress to reach his land. Whether it is based on the easement of necessity or not, it is a matter to be decided during the trial. I am not expressing any of my opinion on this aspect.

6. The relief claimed in the suit by the respondent is for bare injunction and it was the plaintiff who moved the Court for the relief of injunction at the first instance. After the suit was numbered, when the defendant was summoned to answer the plaint averments and the relief claimed therein, he filed the writ statement wherein it appears that the defendant set up a counter claim. Admittedly, the lands of the both the parties were subjected to the partition by metes and bound and the parties do not controvert the same. Therefore, there is distinction between the relief of bare injunction and the relief of declaration of right of easement at this stage.

7. It is well settled law that a person who sets the law in motion and seeks a relief before the Court, must necessarily be in a position to prove his case and get the relief moulded by the law and in no case, he can be allowed to stand on the legs of the defendant, whatever may be the position or stand the defendant takes, for the very reasoning that the defendant is expected to answer the claim and allegation made by the plaintiff in the suit. In consonance with the said legal mandate, it is for the plaintiff to taken up the case and discharge his onus first. It is what is embodied by the statute under O. 8, R. 1 of the Code. To say so more precisely, the defendant has not admitted the claim of the plaintiff, viz., the defendant is not entitled to form a road. On the other hand, the defendant wants his right to form a road to be declared. In the context that such right has not at all been given to the defendant in the partition deed or otherwise, simply because the defendant was

allowed to use the land of the plaintiff, it does not amount to the presumption that the defendant has admitted the claim of the plaintiff. To substantiate the claim of the plaintiff, and to get the relief asked for in the plaint, the plaintiff has to prove that the defendant is attempting to form a road through his land and that is what actually in the cause of action for the suit. Having thus considered the two reliefs, viz., the relief claimed in the suit as well as the counter-claim made in the written statement, with reference to the pleadings of the both the parties, it is all well to say that both the reliefs are different and distinct and the plaintiff and the defendant are put on separate onus to prove the said reliefs by adducing legal evidence. But, however, pursuant to the O. 18, R. 1 of the Code of Civil Procedure, since the plaintiff has come forward with the suit with a specific relief, it is for him to discharge his onus first and then, the defendant is entitled to adduce rebuttal evidence, which may sometimes or if allowed by the trial Court, include the first issue framed for the purpose of trial regarding the counter-claim made in the written statement.

8. In the light of my above discussions, the observations made by the learned trial Munsiff in paragraph-5 of the impugned order are not correct and the very approach adopted by him cannot be sustained. However, since this case appears to be ripe for trial, then the initial burden or the subsequent rebuttal evidence assumes no preference. As I have observed already, the plaintiff must begin with the case by adducing evidence and then the rebuttal evidence to substantiate the case of the defendant and to prove the counter claim on Issue No. 1 must follow. In the light of the above observations, the trial Court is hereby directed to commence the trial of the suit and dispose of the same in accordance with the law by giving full opportunity to both the parties herein.

9. In the result, for all the foregoing reasonings, with the above directions, the revision is allowed, with no order as to costs, to either of the parties, under the circumstances of the case.

10. Revision allowed.