Sivagami, Vs. Narayanan

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SooperKanoon Citation : sooperkanoon.com/806654

Court : Chennai

Decided On : Apr-11-2002

Reported in : (2002)2MLJ237

Judge : M. Chockalingam, J.

Appeal No. : C.R.P. PD No. 4076 of 2001 and CMP No. 21986 of 2001

Appellant : Sivagami, ;rajathiammal, ;sithan and Venkitusamy

Respondent : Narayanan

Advocate for Def. : P. Jagadeesan, Adv.

Advocate for Pet/Ap. : T.R. Rajaraman, Adv.

Disposition : Revision petition allowed

Judgement :
ORDER

M. Chockalingam, J.

1. What is challenged herein is an order of the learned District Munsif, Sankari, allowing an application filed by the respondent/plaintiff seeking for amendment of the plaint.

2. It was a suit filed by the respondent herein for declaration of title and for other reliefs. It is an admitted position that the necessary issues were framed, and the parties went on trial, and the trial was also over. The case was posted for hearing the arguments of both sides. At that time, the instant application for amendment was filed. The said application for amendment was allowed. Challenging the said order, the defendants have brought forth this revision.

3. After careful consideration of the rival submissions and the averments made in the affidavit filed in support of the application for amendment and the original pleadings in the plaint and the amendment now sought to be introduced, the court is of the view that the order of the court below was plainly erroneous, and that the court below should have rejected the application for amendment.

4. As could be well seen from the plaint, originally filed, the relief of declaration was sought for alleging that the father of the defendants 1 and 2 viz. the respondent/plaintiff had executed a settlement deed in favour of his two daughters; that they were put in possession of the property; that in breach of the covenant therein, they have sold the property to the defendants 3 and 4; that the father subsequently cancelled the settlement, and thus he was entitled for declaration and other reliefs. Pursuant to the filing of the suit, a written statement was filed, and issues were framed, and evidence has also been adduced by the parties, pursuant to such pleadings. After the trial was over, when the matter was ripe for arguments, the instant application was filed to incorporate the following amendment:

'1. In paragraph 5 page 3 in line 3 in between the words 'property' and 'only' add the following 'along with the plaintiff'.

2. Add in the same paragraph the following: 'it is the intention of the plaintiff that immediate disposition of right in the suit property should not vest with defendants 1 and 2 and it was designed to take effect on their heirs only after their life time. As such the said document dated 24.10.80 is only a will. The defendants 1 and 2 are not provided with any absolute right over the suit properties.''

5. As could be well seen from the plaint, what was originally filed, the cause of action was based on the alleged settlement deed, and it was also acted upon by putting the defendants 1 and 2 in possession of the property. There was a covenant and clause embodied therein restricting the defendants 1 and 2 from selling the property. But in breach of the same, they have sold the property to the defendants 3 and 4, which necessitated the father to cancel the settlement deed and then ask for the said reliefs. A perusal of the instant amendment, as found above, would clearly reveal that they were not put in possession, and the document was a Will, which would come into existence after the life time of the plaintiff father, and thus, it would be clear that the amendment sought to be introduced by the plaintiff would definitely change the character of the suit. Under the circumstances, the lower court should not have allowed the amendment. The court is of the view that the so-called amendment would not only change the character of the suit, but also the causes of action.

6. Relying on a decision of the Apex Court reported in (2001) 2 S C C 472 (RAGU THILAK D.JHON V. S.RAYAPPAN AND OTHERS), the learned counsel appearing for the respondent-plaintiff would submit that even in cases, where the character of a suit is changed, amendment has got to be permitted. Relying on a decision of this court reported in 2001 3 L.W. 529 (SELVARJ AND OTHERS V. CHENNASAMY GOUNDER), the learned counsel for the respondent would urge that the amendment should not be refused on the ground of delay. This court cannot have any quarrel with these decisions. It is true that even in cases, where the character of the suit is changed, amendment could be made, but only in fit and proper cases, and not in a case of this nature.

7. As far as the decision relied upon by the respondent and reported in (2001)2 S C C 472 is concerned, it was a case where during the pendency of the suit, the respondents entered into his property and demolished a portion of the property, and there arose a necessity for including a prayer for recovery of damages, and though it was refused to be allowed, in the appeal, the Apex Court has allowed the amendment. But the instant case is not a case of that nature. Insofar as the second decision reported in 2001 3 L.W. 529 is concerned, it has no application to the present facts of the case, since in the instant case, the court is unable to see

any reason for condonation of the delay. In the instant case, if the amendment is allowed, it would not only take away the character of the suit, but also the basis of the suit itself. Under the circumstances, the lower court without considering the legal position in the proper perspective, has allowed the application, which is illegal in the eye of law. Thus, the order of the court below is liable to be set aside.

8. In the result, this civil revision petition is allowed, setting aside the order of the lower court. The trial court is directed to hear the arguments of both sides and dispose of the suit within a period of two months from the date of receipt of communication of this order. There shall be no order as to the costs. Consequently, connected CMP is closed.