

K. Chelladurai and ors. Vs. K. Sivasami thevar and anr.

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Court : Chennai

Decided On : Jan-19-1990

Reported in : (1990)2MLJ459

Appellant : K. Chelladurai and ors.

Respondent : K. Sivasami thevar and anr.

Judgement :

ORDER

Sethuraman, J.

1. These two revisions are sought to be filed against the orders passed in I.A. Nos. 69/89 and 70/89 in O.S. No. 148 of 1983 on the file of the learned District Munsif, Aruppukkottai. I.A. Nos. 69/70 and 70/89 are applications under Order VI Rules 17 and 18 read with Section 151 C.P.C. praying for correction of the father's name of the applicant as Karuthiah Thevar instead of Karuppiah Thevar in the cause title, pleadings, judgment and decree as well as in the sale deed to be executed in favour of the applicant in pursuance of the decree in the suit for specific performance of the agreement for sale.

2. The suit O.S.No.148 of 1983 was filed by the applicant/plaintiff for specific performance of the agreement for sale and the suit was decreed in his favour and there was an appeal against the judgment and decree by the defendants and the appeal was also dismissed. Thereafter, in pursuance of the decree an execution

petition No.53 of 1987 was filed for getting the sale deed executed through court and at that time the mistake with regard to his father's name was noticed and, according to the affidavit filed in support of the application by the applicant, the mistake has happened while typing the plaint itself in wrongly typing the father's name and in such circumstances the application was filed for correcting his father's name in the cause title as well as in the pleadings, the judgment and decree and the same will not change the character and nature of the case.

3. The applications had been opposed in the counter-affidavit filed by the third respondent contending that the applicant had given instructions and has filed the pleadings and also contested the appeal and the appeal was also on the basis of the pleadings filed in the suit and in the trial Court and in the appellate court it was not stated that the father's name of the applicant was different and by allowing the amendment there will be change of cause of action and the decree will become in effective. In such circumstances, the application has to be dismissed. The applicant, placing false recitals in the case, obtained the decree and now he is trying to amend the father's name and such amendment cannot be made especially at the execution stage and the application is belated and, therefore, the application had to be dismissed.

4. In support of the application the applicant examined himself as P.W.1 and filled the counter in E.P.No.53 of 1987 as Ex.P.1 and the copy of the plaint as Ex.P.2. No oral or documentary evidence was let in by the respondents. The learned District Munsif, Aruppukottai, enquired into the petition and held that the applicant is entitled to the reliefs prayed for in the applications and the applications were allowed, directing the parties to bear their own costs.

5. It may be pointed out at this stage, while the applications were allowed as prayed for, in the decreetal order it was stated that the application is dismissed. The revisions had been filed against the fair and decreetal orders and in both the revisions, among other grounds, the first ground is that it has been contended that the fair and decreetal order are opposed to law and the trial court has rendered two types of orders and the fair order reads 'the application is allowed' and the decreetal order reads 'the application is dismissed.'

6. The fair and decreetal orders, when perused by this Court, the mistake was noted and the learned District Munsif was asked to explain the discrepancy. The learned District Munsif, finding out the mistake suo motu, directed rectification of the mistake in drafting the decreetal order and the learned District Munsif called for the explanation from the staff and gave suitable directions. The learned District Munsif had expressed regret for the mistake in drafting the decreetal order that had been signed by him. It appears the learned District Munsif directed the counsel to produce the certified copy of the decreetal order for making necessary corrections but that had been refused to be complied with. It was contended by the learned Counsel for the petitioner in the revision petition that the revisions had been filed as such on the basis of the fair and decreetal orders furnished and the revision petitioner should be allowed to put forth his argument as appeared on the record. The learned Counsel was allowed to make his submissions.

7. It has been contended on behalf of the revision petitioner that the provision under Order VI Rule 17 C.P.C., are not applicable after the disposal of the suit or appeal and after filing of the execution petition. The changing of the father's name altogether changes the identity of the person, who figured as plaintiff, and it will be in consonance with the original plaint if the amendment is allowed. The cause of action, according to the original plaint is with reference to Sivasami Thevar son of Karuppiah Thevar and by virtue of the amendment it may refer to a different person and in such circumstances that will change the cause of action and the entire scope of the suit is altered. The amendment of the plaintiff's name or his father's name cannot be said to be a mis-description and cannot be allowed according to well-settled authorities. In the affidavit filed in the suit, his father's name has been stated to be Karuppiah Thevar and not Karuthiah Thevar and the Plaintiff is estopped from contending that he is the son of Karuthiah Thevar. The applications themselves ought not to have been allowed to be filed and the court below erred in allowing the applications. Even during the appellate stage no amendment was made and it will be too late in the day to put forward such an amendment. In such circumstances, it had been contended that the order passed by the court below have to be set aside.

8. The point for consideration in the revisions is as to whether the court below erred in exercising jurisdiction by allowing the amendment prayed for by the respondent.

9. It is to be seen that the amendment related to father's name of the respondent and, according to the respondent, the father's name has to be corrected as Karuthiah Thevar from Karuppiah Thevar. It has been submitted that the said mistake occurred during typing and in that connection the draft plaint has been marked as Ex.A.2. The applicant has examined himself as P.W.1 and has stated that his father's name is Karuthiah Thevar and he had three brothers out of which two of them died and he had filed the suit for specific performance against the defendants and the defendants 1 and 2 are the sons of his deceased brother Karuppanan and the defendants 3 and 4 are the sons of the other brother Subbu, who is also dead. The suit was originally filed on the file of the District Munsif, Manamadurai and subsequently transferred to the file of the learned District Munsif, Aruppukkottai after the Court started functioning there. The suit was decreed by the learned District Munsif and there was an appeal before the Sub-Court, Srivilliputhur and the appeal was also dismissed. There was no second appeal. As the defendants failed to execute the sale deed, the execution petition No. 53 of 1987 was filed by the plaintiff and the counter had been filed in the execution petition and that counter had been marked as Ex.P.1 in this case. The execution petition was allowed directing to execute the sale deed. At the time when the draft sale deed was prepared, the father's name of the applicant was suited as Karuthiah Thevar and the father's name was found to be different from that of the plaint and oilier papers and so, the draft sale deed was returned by the Court and at that stage the mistake came to light and the applications had been filed stating that the mistake was accidental. In this connection the court below has taken into consideration that the applicant has deposed as P.W.I in the suit O.S.No.148 of 1983 and he gave the father's name as Karuthiah Thevar as could be seen from the deposition. It has been also pointed out by the trial court that in the draft plaint also the father's name has been shown as Karuthiah Thevar but had been wrongly typed as Karuppiah Thevar. It may be pointed out that nowhere the present revision petitioners have contended that the father's name of the applicant is only Karuppiah and not Karuthiah Thevar and that objection was not

put forward while opposing the amendment. In this connection, it will also be pertinent to point out that the respondents are none other than the uncle's sons of the Petitioner. They know pretty well the father's name of the petitioner and if really the petitioner's father's name is not Karuthiah Thevar but it is only Karuppiah Thevar, their objection for amendment could be accepted. In the draft plaint also it has been stated that the father's name is found as Karuthiah Thevar and so, as pointed out by the court below the mistake has happened while typing the original plaints and that had been followed subsequently.

10. The court below had also taken into consideration the decisions that had been placed before me on behalf of the petitioner and they are:

1. Saguna Barik v. Bichinfa Barik : AIR1966 Ori225 .;
2. Manuri Rukminamma v. Manuri Ramakrishna Rao : AIR 1969 AP128 ;
3. Karuthunisa Begum v. Kujarnee Bi, 1982 TLNJ 20;
4. 1974 T.L.N.J. 463 and
5. Periasami Gounder V. Ramaswami Gounder, 1981 T.L.N.J. 127.

11. The contention that is now put forward by the learned Counsel for the petitioner that Section 151 C.P.C., has no application and further under Section 152 C.P.C., the mistake cannot be corrected since it is not a clerical mistake. The learned Counsel also placed the decision in Rukmani Devi1Pawan Kumar : AIR1979 Pat88 , That decision relates to a suit for specific performance where a decree was passed only against the vendor and not against the subsequent purchaser and execution of the decree against the latter by amendment of plaint was allowed to be not permissible. An amendment at an execution stage was not allowed. It has been laid down by the learned Judges of the Patna High Court that under Section 152 C.P.C., a decree cannot be amended if it is prepared on the basis of the judgment. If there is variance in the judgment and decree, the decree can be amended otherwise.

12. It is to be seen, the mistake here is in the father's name of the applicant/plaintiff. That mistake had happened there having regard to the fact that the father's name was wrongly typed in the original plaint. It is not the case of the revision petitioners that the father's name of the respondent is only Karuppiah Thevar and not Karuthiah Thevar. The revision petitioners are none other than the uncle's sons of the respondent. While the fact remained so it is futile to contend that the Court has no power under Section 151 C.P.C. It may also be pointed out that under Section 153 C.P.C., the Court has got power to amend any mistake or error at any time. Having regard to such circumstances, the decision now sought to be relied on by the learned Counsel for the petitioners cannot be said to be useful. I find the decision against which the revisions have been filed are not perverse or against law. Accordingly, the revision petitions are dismissed.