

Sekar Vs. Subramaniyam

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Court : Chennai

Decided On : Nov-19-2012

Reported in : 2013(1)MLJ20; 2013(1)MWN(Civil)1

Judge : R.S. Ramanathan

Appeal No. : C.R.P(PD)No.175 of 2012 and M.P.No.1 of 2012

Appellant : Sekar

Respondent : Subramaniyam

Advocate for Pet/Ap. : For the Revision Petitioner: L. Rajendran, Advocate. For the Respondent: V. Raghavachari, Advocate.

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 28.03.2011, passed in I.A.No.132 of 2011, in O.S.No.484 of 2004, on the file of the District Munsif Attur.)

The defendant is the revision petitioner herein.

2. The respondent/plaintiff filed the suit for recovery of money, on the basis of the promissory note, dated 02.07.2001, alleged to have been executed by the revision petitioner/defendant. The revision petitioner/defendant denied the execution of the promissory note and receipt of consideration in the written statement. P.W.1 was

examined and the revision petitioner/defendant also filed a proof affidavit. At that point of time, the respondent/plaintiff filed an application order Order 6, Rule 17 C.P.C., to amend the pleadings to the effect that in the cause of action para, due to typographical error, the place of execution of the promissory note was mentioned as 'Pallipalayam', instead of 'Aragalur' and therefore, the amendment application has to be allowed. The said amendment application was allowed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. Mr.L.Rajendran, the learned counsel appearing for the revision petitioner submitted that the application for amendment was filed, after the commencement of trial, and, no reason has been stated by the respondent for not filing the application before the commencement of trial, except, stating that, due to typographical error, the place of execution of the promissory note was wrongly mentioned. Moreover, after the amendment of the Code of Civil Procedure, post trial amendment cannot be entertained, unless, sufficient cause is shown by the plaintiff for filing the application for amendment. Hence, the Court below erred in allowing the application for amendment. The learned counsel, further submitted that in the plaint, except in para no.5, viz., the cause of action para, he has not stated the place of execution of the promissory note any where and in evidence, P.W.1 has stated that the promissory note was executed at Aragalur and it was wrongly mentioned as Pallipalayam Village. Therefore, in the absence of any clarification in the evidence, the respondent cannot be permitted to amend the plaint by substituting the place of execution of the promissory note.

4. Mr.V.Raghavachari, the learned counsel appearing for the respondent submitted that, no prejudice would be caused to the revision petitioner by allowing the application for amendment, as the revision petitioner denied the execution of the promissory note and therefore, whether the promissory note was executed at Pallipalayam, or at Aragalur, that makes no difference and hence, the Court below has rightly allowed the application. The learned counsel further submitted that by reason of the amendment, the respondent is also not indulging in forum shopping, whether the promissory note was executed at Pallipalayam or at Aragalur, the same Court retains the jurisdiction and therefore, in the absence of any prejudice, being caused to the revision petitioner, he cannot object to the amendment. The

learned counsel further submitted that though the application for amendment was filed, after the commencement of trial, such amendment cannot be rejected on that ground, and the Court must take into consideration the nature of amendment, and the prejudice that would be caused to the other side, by allowing such amendment. In this case, by changing the place of execution of the promissory note, no prejudice would be caused to the revision petitioner and therefore, the order passed by the Court below calls for no interference. The learned counsel finally submitted that in case of amendment, being rejected, the respondent may be permitted to prove the place of execution of the promissory note to fortify his case.

5. According to me, the Court below without properly appreciating the pleadings, evidence let in, erred in allowing the application for amendment. As stated supra, in the plaint, in Para No.3, it is only stated that the defendant borrowed a sum of Rs.50,000/- from the plaintiff on 02.07.2001 and executed a promissory note in favour of the plaintiff. The place of execution of the promissory note was not stated in Para No.3 and in Para No.5, it is stated that the cause of action arose when the defendant executed the promissory note at Pallipalayam Village. In the written statement, the defendant denied the allegations of borrowal of Rs.50,000/- from the plaintiff on 02.07.2001 and also the execution of the promissory note in favour of the plaintiff at the very same time.

6. Therefore, the revision petitioner denied the execution of the promissory note in favour of the respondent and also the fact of receipt of consideration from the respondent. P.W.1 was examined in the year, 2008 and it is evident from the typed set of papers in Page No.10, that the continuation of chief examination of P.W.1 was conducted on 02.09.2008. In the proof affidavit filed by the respondent, he has stated that the promissory note was executed at Aragalur and in the cross-examination too, he reiterated the same. Admittedly, the witnesses, who attested the promissory note are residing at Aragalur. Probably, with an intention of examining those witnesses to prove the execution of the promissory note, the respondent might have stated in the chief examination and in the cross-examination that the promissory note was executed at Aragalur. Nevertheless, in the chief or in the cross, the respondent did not state that the execution of the

promissory note was mistakenly stated as 'Pallipalayam Village' in the plaint and it was executed at Aragalur. After evidence was over on 21.10.2010, in July, 2011, the application was filed by the respondent for amendment of the pleadings.

7. According to me, though amendment will not cause any prejudice to the revision petitioner, as the revision petitioner has denied the execution of the promissory note, the amendment application cannot be allowed, as it is an attempt to corroborate evidence by introducing the pleadings. Normally, evidence must corroborate the pleadings and not *vice versa* and in this case, after the respondent has let in evidence, in the absence of any pleadings to the effect regarding the place of execution, he wanted to substantiate the evidence by introducing the new pleadings, which is not permissible in law. These aspects was not properly considered by the Court below, while allowing the application for amendment. No doubt, all post trial amendments need not be rejected and the Court is competent to allow the post trial amendment, if sufficient cause is shown by the party. In this case, the respondent/plaintiff is attempting to introduce the pleadings to suit the evidence and that cannot be permitted. Therefore, the order of the Court below is liable to be set aside.

8. In the result, this Civil Revision Petition is allowed. Since the learned counsel for the respondent sought for a relief that in the absence of amendment, the respondent/plaintiff may be permitted to prove the place of execution of the promissory notice, the respondent/plaintiff is at liberty to prove the place of execution of the promissory note in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

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