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Subramani Vs. Ganapathy

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Court : Chennai

Decided On : Feb-18-2013

Judge : The Honourable Mr.Justice M.Venugopal

Appellant : Subramani

Respondent : Ganapathy

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATE :

18. 02.2013 CORAM THE HONOURABLE Mr. JUSTICE M. VENUGOPAL C.R.P.(PD)No.923 of 2011 and M.P.No.1 o

1. Subramani 2.Mani 3.Thangavel 4.Ravi 5.Anbazagan .. Petitioners Vs 1.Ganapathy 2.Ponnagounder @ Ramasamy 3.Kailalsam 4.Palanivel .. Respondents Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India as against the order passed by the Learned Additional District Munsif, Tiruchengode made in I.A.No.501 of 2010 in O.S.No.202 of 2009 dated 14.09.2010. For Petitioners : Mr.S.Sivakumar For Respondents : Mr.T.Murugamanickam ORDER The Petitioners/Plaintiffs have filed the instant Civil Revision Petition as against the order dated 14.09.2010 in I.A.No.501 of 2010 in O.S.No.202 of 2009 passed by the Learned Additional District Munsif, Tiruchengode. 2.The Learned Additional District Munsif, Tiruchengode, while passing the impugned order dated 14.09.2010 in I.A.No.501 of 2010 in O.S.No.202 of 2009, has among other things observed that 'apart from the First

Petitioner (First Plaintiff), there are 2 to 5 Plaintiffs in the main suit, but, all the Plaintiffs in the main suit have not filed the present petition and only the First Plaintiff alone has filed the present petition for amendment and also in the affidavit in I.A.No.501 of 2010, it has not been averred by the First Petitioner (First Plaintiff) that he has filed the said petition for and on behalf of the other Petitioners (Plaintiffs) and also that, it transpires from the documents filed from the suit that all the 5 Plaintiffs are not from the same family and as much as the First Petitioner (First Plaintiff) has not mentioned in the affidavit in I.A.No.501 of 2010 as to why he has not added the other Plaintiffs 2 to 5, the petition is not liable to be permitted to be allowed' and resultantly, dismissed the petition without costs. 3.Challenging the propriety of the order of dismissal dated 14.09.2010 in I.A.No.501 of 2010 in O.S.No.202 of 2009 on the file of the trial Court, the Learned Counsel for the Petitioners/Plaintiffs submits that the First Petitioner/First Plaintiff has filed I.A.No.501 of 2010 (amendment petition seeking to amend the boundaries mentioned in the Plaint) without mentioning that he has filed the said petition for and on behalf of the other 2 to 5 Plaintiffs in the main suit O.S.No.202 of 2009, which has been admittedly filed for seeking the relief of permanent injunction, etc., and also that, the trial Court has omitted to bear in mind that when technical considerations and deliverance of substantial Justice are fitted against each other then, it has to lean in favour of delivering of substantial justice to the parties overriding technicalities, which has led to the serious miscarriage of Justice. 4.A cursory perusal of the affidavit in I.A.No.501 of 2010 filed by the First Revision Petitioner/First Plaintiff shows that the First Petitioner has not expressly implied or stated that he has filed the said I.A.No.501 of 2010 for and on behalf of the other 2 to 5 Plaintiffs in the case. 5.Per contra, he has simply stated in Para 1 of the affidavit in I.A.No.501 of 2010 in Tamil that he is the Petitioner in the Interlocutory Application and he is the First Plaintiff. Admittedly, the First Revision Petitioner/Petitioner/First Plaintiff has filed I.A.No.501 of 2010 under Order 6 Rule 17 of the Code of Civil Procedure, seeking permission of the trial Court to amend the boundaries mentioned in the Plaint schedule of the properties concerned. Significantly, the First Revision Petitioner/First Plaintiff has shown to the affidavit in I.A.No.501 of 2010. However, the Revision Petitioners/Plaintiffs Counsel has filed the said I.A.No.501 of 2010 in O.S.No.202 of 2009 on the file of the trial Court.

6.Before the trial Court, the Fourth Respondent/Fourth Defendant has filed a counter to I.A.No.501 of 2010 (adopted by D1 to D3). In the said counter, in Para 3, a specific stand is taken on behalf of the Defendants that I.A.No.501 of 2010 as against filed by the First Petitioner for himself alone and the same will not bind the others. Therefore, the Interlocutory Application as framed, is not maintainable and liable to be dismissed in limine. 7.In Para 4 of the counter, the Respondents/Defendants have averred that the First Petitioner wanted to amend the four boundaries of the suit Survey No.150 by way of the proposed amendments after marking the exhibits and after their arguments in I.A.No.128 of 2009 and reply arguments of the Respondents. Further, a stand has been taken on behalf of the Respondents/Defendants that since the petitioners are not in possession and enjoyment of the suit properties, they are not able to give, description of the suit properties and also that the proposed amendment is vague. 8.It is brought to the notice of this Court that I.A.No.128 of 2009 has been withdrawn by the Petitioners before the trial Court. 9.It is to be borne in mind that the amendment of Plaint under Order 6 Rule 17 of Code of Civil Procedure is to be erroneously allowed by a Court of Law by adopting a lenient and liberal view. Admittedly, the main suit in O.S.No.202 of 2009 on the file of the trial Court is pending for the conduct of the trial. The relief prayed for by the Revision Petitioners/Plaintiffs and the relief that has been sought for by them in I.A.No.128 of 2009 in effect, is one and the same. To put it succinctly, the Revision Petitioners/Plaintiffs have sought the relief of permanent injunction against the Respondents/Defendants and their men, in any way or in any manner disturbing their peaceful possession and enjoyment of the 'A' schedule property in Athanoor Amman Kovil land. Also, the Revision Petitioners have sought the relief of permanent injunction restraining the Defendants and their men etc., from preventing the Revision Petitioners (Plaintiffs) performing poojas to Arulmigu Athanoor Amman Temple 'B' schedule property. 10.This Court, taking note of the fact that the trial Court has dismissed the I.A.No.128 of 2009 (temporary injunction) and also the fact that the First Revision Petitioner/First Plaintiff has only filed an affidavit in I.A.No.501 of 2010 in which the other Plaintiffs 2 to 5 have not joined and notwithstanding the fact that the other Plaintiffs 2 to 5 have not joined as parties in the said I.A.No.501 of 2010 (of course, the other Plaintiffs 2 to 5 have

been shown as parties in the short and long cause title in I.A.No.501 of 2010), by taking a lenient and liberal view and also bearing in mind and important fact judiciary is respected not on account of its power to legalise in justice on technical grounds but, it is capable of removing so and is caused to do so. Furthermore, when technical considerations and deliverance of substantial justice are fitted against each other, then, it is the duty of the Court of Law to lenient favour of the parties, with a view to secure the ends of justice. Viewed in that perspective, this Court holds that the trial Court is not correct in relying on technicalities or hyper technicalities in regard to the fact that the First Petitioner/First Plaintiff has not averred in I.A.No.501 of 2010 that he has filed the said Interlocutory Application for and on behalf of the Petitioners. In the result, this Civil Revision Petition is allowed. The order passed by the trial Court in I.A.No.501 of 2010 in O.S.No.20 of 2009 is set aside by this Court for the reasons assigned in this revision. The trial Court is directed to restore the I.A.No.501 of 2010 to its file and after restoring, the same is directed to provide an opportunity to the Revision Petitioners/Plaintiffs to amend the I.A.No.501 of 2010 for the purpose of including/inserting an averment and the said petition is filed for and on behalf of the other 2 to 5 Plaintiffs. Thereafter, the trial Court is also directed to provide adequate/enough opportunity to the Respondents/Defendants to file any of Additional Counter. In any event, the trial Court is directed to dispose of I.A.No.501 of 2010, within a period of three weeks from the date of receipt of a copy of this order and to report compliance to this Court without fail. Consequently, the connected M.P.No.1 of 2011 is closed. mps To The Additional District Munsif Tiruchengode

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