

(2014) 11 MAD CK 0027

Madras High Court

Case No: C.R.P. (PD). No. 3772 of 2013 and M.P. No. 1 of 2013

C.R. Umapathy

APPELLANT

Vs

D. Sathyanarayana Chettiar

RESPONDENT

Date of Decision: Nov. 7, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 17

Citation: (2015) 1 CTC 398

Hon'ble Judges: K. Ravichandra Babu, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandrabaabu

1. This Civil Revision Petition is filed challenging the order dated 10.9.2013 made in I.A. No. 946 of 2013 in O.S. No. 19 of 2010 on the file of the District Munsif Court, Ponneri, in dismissing the application filed by the petitioners under Order 6 Rule 17 CPC seeking permission to amend the plaint.

2. The revision petitioners herein are the plaintiffs and the respondents herein are the defendants in the said suit. The said suit was filed for declaration to declare that the plaintiffs are the true and absolute owners of 50% undivided share of the property described in the plaint schedule and for permanent injunction restraining the defendants 1 to 4 from interfering with the suit property.

3. After the filing of the abovesaid suit in the year 2010, the petitioners/plaintiffs filed I.A. No. 946 of 2013 seeking for amendment of the plaint to add the relief of possession as well, along with the existing relief as stated supra. In the said application, they have contended that by over-sight, the relief of possession was omitted to be asked for and unless such relief is also included in the main prayer, they cannot enjoy the fruits of the decree in the event of their success. It is also

contended by them that the relief of possession sought for by way of amendment, is not barred by limitation.

4. Such application was opposed by the third defendant by filing a counter affidavit, contending that the petitioners do not have any right in the property and when they seek the declaratory right only in respect of 50% of the undivided suit property, in the amendment, they seek for recovery of possession of the entire suit property. Thus, it is contended that the amendment is changing the very nature of the suit itself without any cause of action. It is also pointed out that the petitioners/plaintiffs have not valued the suit property on the market value by paying necessary Court fee.

5. The Court below dismissed the said application by holding that the relief of possession sought for by way of amendment, is a destructive plea, since the petitioners/plaintiffs retained the relief of permanent injunction as well in the prayer and they have not incorporated the Section of law for the Court Fee and not valued the suit. It is also observed by the trial Court that the petitioners/plaintiffs did not plead and prove that they could not raise the plea at the earliest inspite of their due diligence.

6. Learned counsel appearing for the petitioners/plaintiffs submitted that the amendment is not changing the nature or character of the suit and the relief of possession is not barred by limitation. He further submitted that in order to avoid multiplicity of proceedings between the parties, the amendment should be allowed. In support of his submissions, he relied on the decisions of the Supreme Court reported in 2003 (10) SCC 242 (Chandan Hazarika Vs. Banti Bhuyan) and [Abdul Rehman and Another Vs. Mohd. Ruldu and Others](#), and a decision of this Court reported in [UCO Bank, Chetpet Branch Vs. Nest Tours and Travels P. Ltd.](#), . Considering the fact that the petitioners have not sought to delete the relief of injunction while seeking to introduce the prayer for possession, the learned counsel submitted that alternatively, the petitioners may be permitted to file a fresh application before the trial Court.

7. Per contra, learned counsel appearing for the respondents 3 and 4 submitted that the plea of injunction and possession cannot go together and therefore, the amendment sought for as such, is not maintainable. He further submitted that admittedly, the petitioners have not sought for amending the plea with regard to the payment of Court Fee as well as the cause of action in the relevant paragraphs of the original plaint. He further submitted that subsequent to the amendment introduced in the Civil Procedure Code in the year 2002, by way of Amendment Act 22 of 2002, the petitioners have not stated and established that inspite of due diligence, they could not make such amendment at the earliest stage. In support of his submissions, learned counsel for the respondents 3 and 4 relied on the decisions of the Supreme Court reported in [J. Samuel and Others Vs. Gattu Mahesh and Others](#), and [Abdul Rehman and Another Vs. Mohd. Ruldu and Others](#), .

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. The point for consideration in this Civil Revision Petition is as to whether the petitioners as plaintiffs are entitled to seek for amendment of the plaint to include the relief of recovery of possession in the suit originally filed for declaration and injunction.

10. The petitioners as plaintiffs filed the said suit by contending that the suit property belongs to four brothers, by name C.K.Ranganathan, C.K.Chokanathan, C.K.Gajapathy and C.K.Ulaganathan, who inherited the suit property from their parents. The plaintiffs are claiming to be the heirs of two brothers, namely C.K.Ranganathan and C.K.Ulaganathan, whereas the defendants 5 to 19 are said to be the heirs of the other two brothers, namely C.K.Chokanathan and C.K.Gajapathy. According to the plaintiffs, the mother of those four brothers, namely Ranjithammal was given only lifetime interest in the suit property without any power of alienation, and therefore, the sale deed executed by the said Ranjithammal in favour of the first defendant on 12.10.1998, followed by another sale deed executed by the second defendant in favour of third defendant on 24.10.2005, are void. Therefore, the plaintiffs contended that they are entitled to 50% of the undivided share in the suit property. Based on such contention, they have filed the suit for declaration and permanent injunction as stated supra.

11. The third defendant filed a written statement, which was adopted by the fourth defendant. It is their contention that the said Ranjithammal along with one Subramani, sold the suit property on 12.10.1998 in favour of the second defendant and patta was also transferred in the name of the purchaser, who in turn sold the property in favour of the third defendant on 24.10.2005, followed by change of patta in favour of the third defendant. Thus, it is the contention of the third defendant that he has become the absolute owner of the suit property and the plaintiffs as well as the defendants 5 to 19 are out of possession for more than 35 years and they do not have title nor entitled to possession. This written statement was filed in the month of June 2010 and after nearly three years, the plaintiffs have filed the present application seeking for amendment.

12. A perusal of the said application filed by the plaintiffs before the trial Court would show that they wanted to add the relief of possession alone in the plaint prayer and nothing else. As rightly pointed out by the learned counsel appearing for the respondents 3 and 4, the plaintiffs are not seeking to delete the prayer for injunction. On the other hand, by retaining such a prayer, they seek to introduce the prayer for possession as well. It is needless to say that both the prayers, namely injunction and possession, do not go together, as they are mutually opposite prayers. While considering the pleadings of the parties, it is settled principle that though the defendants can take contradictory pleas, the plaintiffs should be clear in their plea and prayer in the main suit. It is not the case of the plaintiffs that they are

in possession and so they seek injunction and in case the Court comes to the conclusion that they are not in possession, alternatively, they are entitled for the relief of possession. On the other hand, it is their case that they have omitted to seek the relief of possession by over-sight. Therefore, the question of considering the relief of possession as an alternative relief also does not arise.

13. Further, it is seen that the plaintiffs have admitted in their original plaint itself that the suit property was sold as early as on 12.10.1998 under a registered Document No. 3075/2001 by Ranjithammal in favour of the second defendant, who in turn sold the same to the third defendant on 24.10.2005, registered as Document No. 5863/2005. It is also stated by the plaintiffs that on the very same day, the second and third defendants executed a registered sale agreement in favour of the fourth defendant in respect of the suit property.

14. When such averments were already made by the plaintiffs in paragraph 5 of the plaint, there are absolutely no averments made in the affidavit filed in support of the amendment application as to why they have not sought the relief of possession at the time of filing the suit itself. In other words, as rightly pointed out by the learned counsel appearing for the respondents 3 and 4, the plaintiffs have not stated and established that inspite of due diligence, they could not raise the matter before the commencement of trial.

15. At this juncture, it is useful to refer the decision of the Honourable Supreme Court reported in [J. Samuel and Others Vs. Gattu Mahesh and Others](#), it has been observed as follows:

"23. Though the counsel for the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order 6 Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order 6 Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delays in filing the applications. (Vide [Aniglase Yohannan Vs. Ramlatha and Others](#), [Ajendraprasadji N. Pande and Another Vs. Swami Keshavprakeshdasji N. and Others](#), [Chander Kanta Bansal Vs. Rajinder Singh Anand](#), [Rajkumar Gurawara \(Dead\) thr. L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another](#), [Vidyabai and Others Vs. Padmalatha and Another](#), and [Man Kaur \(dead\) by LRS. Vs. Hartar Singh Sangha](#).)"

16. Further, in the decision reported in [Abdul Rehman and Another Vs. Mohd. Ruldu and Others](#), the Apex Court held in paragraphs 10 and 11 as follows:

"10. ... It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of

determining the real question in controversy between them. The courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

11. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage."

17. Learned counsel appearing for the petitioners relied on the decision of the Honourable Supreme Court reported in 2003 (10) SCC 242 (Chandan Hazarika Vs. Banti Bhuyan) to contend that the proposed amendment based on two different pleas, can be allowed, if no prejudice is caused to the opposite party by the said amendment. Two different pleas cannot be equated with two pleas destructing each other. In this case, as pointed out earlier, the plea of injunction and possession are undoubtedly destructive plea to each other, and therefore, in my considered view, the above decision will not help the petitioners/plaintiffs in any manner.

18. The other decision relied on by the learned counsel appearing for the petitioners reported in [UCO Bank, Chetpet Branch Vs. Nest Tours and Travels P. Ltd.](#), is a decision rendered by this Court, wherein it was held that the amendment can be allowed when the nature and character of the suit and also the point of limitation, are not affected or altered. A perusal of the abovesaid decision would show that this Court has also pointed out in paragraph 15 by relying on the decision of the Honourable Supreme Court reported in [Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others](#), that adding, altering or substituting a new cause of action in the plaint may be objectionable.

19. Here, the plaintiffs are trying to introduce the plea of recovery of possession in view of the sale deeds executed in the years 1998 and 2005. Admittedly, the plaintiffs are not seeking to set aside the sale deeds, even though such sale was effected by their predecessor, namely Ranjithammal, on whom, the plaintiffs claim that only lifetime interest was vested and not the absolute power. In any event, as the plaintiffs have not chosen to challenge the sale deeds, claiming recovery of possession in respect of the property that was sold in the year 1998, is also barred by limitation.

20. At this juncture, it is relevant to quote the recent decision of the Honourable Supreme Court reported in [Voltas Limited Vs. Rolta India Limited](#), wherein, it is observed that the Court should decline amendments if fresh suit on the amended

claims would be barred by limitation on the date of application. Paragraph 30 of the said decision reads as follows:

"30. In [Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others](#), , while laying down some basic principles for considering the amendment, the Court has stated that as a general rule the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application."

21. No doubt, the learned counsel appearing for the petitioners also relied on the decision of the Honourable Supreme Court reported in [Abdul Rehman and Another Vs. Mohd. Ruldu and Others](#), to contend that in order to avoid multiplicity of proceedings, the amendment should be permitted. However, such general proposition of law has to be applied only when the facts and circumstances of each case permit for applying so. In this case, the above stated facts and circumstances would show that the plaintiffs are not entitled to seek for amendment and therefore, the said decision is also not helping the petitioners, as the present case is factually on a different footing.

22. Considering all the above facts and circumstances, I am of the view that the impugned order of the Court below in rejecting the amendment application, does not warrant any interference. Accordingly, the Civil Revision Petition fails and the same is dismissed. No costs. The Miscellaneous Petition is closed.