(2014) 11 MAD CK 0530

Madras High Court

Case No: C.R.P. (PD) No. 1124 of 2011 and M.P. No. 1 of 2011

S. Selvam — APPELLANT

Vs

Madanlan Chawla — RESPONDENT

Date of Decision: Nov. 27, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 227

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

P.R. Shivakumar, J.
The arguments advanced by Mr.P.Jagadeesan, learned counsel for the petitioners and by Mrs.Chitra Sampath, learned senior counsel appearing for Mr.Nalliappan, learned counsel for the first respondent and of Mr.A.Thiyagarajan, learned counsel for the second respondent are heard and the materials produced in the form of typed-set of papers are also perused

2. The plaintiff in O.S.No. 1205 of 2007 on the file of the Principal District Munsif, Salem is the first respondent in the revision. The suit was filed praying for the following reliefs:

a) to declare the Gift Settlement Deed dated 27.09.2006 in favour of the 1st defendant as null and void;

b) to declare the General Power of Attorney dated 12.10.2007 in favour of the 2nd defendant as null and void;

c) directing 1st and 2nd defendant not to alienate or encumber the suit property by means of permanent injunction

d) Restraining the defendants 1st and 2nd from in any manner disturbing or interfering in the peaceful possession and enjoyment of the suit property and not to interfere in the leveling work of suit property, fencing work and compound wall earth excavation work of the plaintiff by means of Permanent Injunction;

e) Restraining the Defendants 1 and 2 from any manner interfering with the construction of the compound wall, and barbed wire fencing by plaintiff;

f) Directing the Defendants 1 and 2 to pay cost of the suit to the plaintiff;

g) Granting such other and further relief as the Honourable Court deems fit and proper in the circumstances of the case and thus render justice.

3. When the suit was in the part-heard stage, the first respondent herein/plaintiff filed an Interlocutory Application in I.A.No. 1092 of 2010 under Order 6 Rule 17 CPC for amending the plaint to include a prayer for declaration of the absolute title of the first respondent/plaintiff claimed in respect of the plaint schedule property. The same was resisted by the revision petitioners/defendants 1 and 2 contending that such a petition filed belatedly was bound to be rejected in limine.

4. The learned trial Judge, after hearing both sides, chose to allow the said petition for amendment, opining that though the amendment was sought for in the part heard stage, it was a necessary amendment, since the suit has been laid for permanent injunction alone and it became necessary for the plaintiff to amend the plaint so as to make it a suit for declaration and permanent injunction in the light of the denial made by the defendants. The learned trial Judge also observed that by allowing the said petition for amendment, no prejudice would be caused to the defendants. The said order is challenged in the present revision.

5. At the time of hearing, this Court pointed out that State Government and Officials have been unnecessarily arrayed as parties in the suit where no relief had been sought for against them. An adjournment was taken on behalf of the first respondent/plaintiff. After getting such adjournment, the first respondent/plaintiff filed I.A.No. 625 of 2014 to advance the hearing of the original suit. Along with the said application, a memo was also filed to the effect that the plaintiff was giving up the suit as against respondents 3 to 5/defendants 4 to 6.

6. Though the order of the learned trial Judge allowing the petition for amendment to include the prayer for declaration has been challenged on the ground that such a petition filed belatedly in the part-heard stage should not have been allowed, during the course of the argument, learned counsel for the petitioners pointed out the fact that the learned trial Judge committed an error in making an observation that the suit had been filed for permanent injunction alone forgetting the other prayers made in the original plaint, namely prayers for declaration that the gift settlement deed dated 27.09.2006 and the deed of Power of Attorney dated 12.10.2007 executed in favour of the first defendant and the second defendant respectively are

null and void. In addition, the learned counsel for the petitioners also contends that the plaint plea itself is ambiguous insofar as the description of property found in the plaint schedule is not in consonance with the averments made in paragraph 6 of the plaint and that in view of the said defect also, the impugned order of the learned trial Judge is liable to be set aside.

7. Per contra, it is the contention of the learned senior counsel appearing for the contesting respondent that clear averment has been made in paragraph 6 of the plaint to the effect that out of the total extent of 7 acres, 1/3rd portion forming the northern part was allotted to Palaniswamy (the father the third defendant), whereas 4.66 2/3 acres forming the southern part was allotted jointly to Kandasamy and his brother Swamiappan; that thereafter, Kandaswamy and Swamiappan partitioned the southern portion jointly allotted to them; that the plaintiff purchased the entire 4.66 2/3 acres under two sale deeds from Kandaswamy''s legal heirs and Swamiappan under Document Nos. 1712/2007 and 1713/2007; that however, in view of the improper description found in the documents, the first item of the suit property came to be described in the plaint schedule as undivided common share admeasuring 2.33 1/3 acres from the undivided common 2/3rd share measuring 4.66 2/3 acres out of the total extent admeasuring 7 acres originally comprised in S.F.No. 117 and similar description was provided for Item No. 2 of the suit properties. It is the further submission made by the learned senior counsel that the boundaries given for Items 1 and 2 will make it clear that the portion lying on the south of Palaniswamy''s property alone is the subject matter of the suit.

8. This Court is not in a position to accept the contention of the learned senior counsel in view of the fact that the plaintiff himself has averred in Paragraph 6 of the plaint that Kandaswamy and Swamiappan, who were allotted jointly 4.66 2/3 acres forming the southern part of S.F.No. 117, subsequently divided the same between them. Irrespective of the fact that the said extent of 4.66 2/3 acres has been divided between Swamiappan and Palaniswamy, the plaintiff, claiming to have purchased the entire extent of 4.66 2/3 acres from the legal heirs of Kandaswamy and Swamiappan, ought to have shown the entire extent of 4. 66 2/3 acres in one schedule with clear boundaries. In case the sale deeds under which the plaintiff had purchased the same contain incorrect recitals as if undivided shares were sold, even then, having purchased the entire southern portion, proper description of the suit property should have been made in the plaint schedule.

9. Be that as it may, the same is not the issue before this Court. The only issue to be decided in this revision is whether the prayer for amendment of the plaint to include the relief of declaration of title should have been rejected by the trial Court on the ground of belatedness. As pointed out by the learned counsel for the petitioners, the learned trial Judge has made a wrong observation as if the suit had been filed for bare injunction alone. On the other hand, the fact remains that the suit has been filed for declaring a gift settlement deed dated 27.09.2006 and the Power of

Attorney dated 12.10.2007 to be null and void and then for the relief of permanent injunction not to disturb his peaceful possession and enjoyment of the suit property.

10. Though Order VI Rule 17 CPC gives power to the Court to allow either party to alter or amend his pleadings at any stage of the proceedings when the Court deems it necessary for the purpose of determining the real question in controversy between the parties. The proviso contains an embargo for allowing an application for amendment after the trial has commenced. The above said proviso, which serves an exception to the rule, contains an exception to the exception that in case 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, such amendment can be allowed. The above said proviso has been now interpreted to be only directory and by judicial pronouncements, it has been established by now that at any stage of the proceedings, amendment can be allowed provided the Court deems it appropriate to allow them on the premise that such amendments are necessary for the purpose of determining the real controversy between the parties.

11. In the case on hand, necessary pleadings have already been made, based on which reliefs have been sought for in the original plaint. The reliefs are sought for based on the assertion that the plaintiff is the absolute owner of the suit property. However, the title of the plaintiff seems to have been questioned by the contesting defendants. It is true that a suit for bare injunction without a prayer for declaration of title when the title of the plaintiff is disputed cannot be said to be not maintainable and the question of title can be incidentally gone into in a suit for bare injunction. When a plea for injunction is made by the plaintiff based on the claim of title and the same is resisted by the defendants disputing the title of the plaintiff, then framing of an issue regarding title and rendering a decision on the same shall be necessary to decide the question of entitlement of the plaintiff to the relief of injunction. Of course, there shall be no impediment for the Court to decide such a question of title incidentally in the suit for injunction. But, when it involves complicated issues not suitable for resolution in a summary trial, then plaintiff has to be relegated to a more comprehensive suit for declaration and other consequential reliefs. If the Court, at the end of trial of the suit for injunction, comes to the conclusion that the issue of title is complicated not suitable for resolution in the trial of summary nature, then it shall not be proper for the Court to dismiss the suit in toto. On the other hand, in such a contingency, the Court has to grant leave to the plaintiff to go for a more comprehensive suit for declaration and injunction. Such a comprehensive suit will cause loss of time and also involved multiplicity of proceedings. On the other hand, permitting the plaintiff in a suit for injunction to amend the plaint to include the prayer for declaration of title, when he comes forward to do so, will prevent such loss of time and also the multiplicity of proceedings. Since necessary pleadings have already been made and what is sought to be done now is to include only a prayer for declaration of title, the defendants shall not be prejudiced.

12. Therefore, this Court comes to the conclusion that the order of the trial Court permitting the amendment sought for to include the prayer for declaration of title cannot be said to be either defective or erroneousness warranting interference by this Court in exercise of its power of superintendence under Article 227 of the Constitution of India. The fact that the order of the trial Court is being upheld, shall not be a bar for the contesting defendants to raise the plea of vagueness or ambiguity in the description of property and if necessary to pray for the rejection of the plaint, if so advised.

13. In the result, the Civil Revision Petition is dismissed. However liberty is given to the contesting defendants to raise the question of maintainability on the ground of vagueness or ambiguity in the description of property. No costs. Consequently, the connected miscellaneous petition is closed.