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C.R.P(MD)No.2178 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2178 of 2022
and
C.M.P.(MD)No.10120 of 2022

Abdul Kadar

...Petitioner/Petitioner

Vs.

1.Mohammed Mustafa
2.Kadar Sha
3.Mariyam Beevi
4.Habeeb Mohammed

... Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside fair and decreetal order dated 10.10.2022 made in I.A.No.306 of 2022 in O.S.No.42 of 2017 on the file of the Sub Court, Aranthangi, Pudukkottai District.

For Petitioner : Mr.D.Rameshkumar
For Respondents 1 & 4 : Mr.S.Prabha
For Respondents 2 &3 : Mr.N.Bala Krishnan

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the order passed in I.A.No.306 of 2022 in O.S.No.42 of 2017 dated 10.10.2022, on the file of the Sub Court, Aranthangi, Pudukkottai District.

2.The petitioner is the first plaintiff in O.S.No.42 of 2017 on the



file of the Sub Court, Aranthangi, Pudukkottai. The suit was originally dismissed by a judgment and decree dated 31.08.2018. Aggrieved by the same, the petitioner herein had preferred an appeal in A.S.No.7 of 2019.

The learned Principal District and Sessions Judge, Pudukkottai by a judgment and decree dated 10.02.2022 allowed the appeal by way of remand with the following observations:-

“Having considered the above said aspects to avoid further aberration I am inclined to accept the prayer of the parties and the matter can be remitted back for consideration afresh and the plaintiffs is at liberty to file appropriate application either for amending the plaint or otherwise if the fact and circumstances warrant so and the respondents are at liberty to file appropriate documents before the trial Court and the documents produced before the Court can also be considered by the learned Subordinate Judge while considering the matter afresh in accordance with law. With the above findings that the matter is remitted back to the learned Subordinate Judge, for disposal in accordance with law.”

3. Thereafter, the petitioner filed I.A.No.306 of 2022 under Order 6 Rule 17 of CPC to amend the plaint and to transpose the second plaintiff as the third defendant. The learned Sub Judge, Aranthangi has dismissed the application filed by the petitioner with the following observation:-

“மேலும் உரிமையியல் நடைமுறைச்சட்டம் கட்டளை 1



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விதி 10(2)ன்படி வழக்கின் தரப்பினரை சேர்க்கவோ, நீக்கவோ மனுவின்படியோ அல்லது நீதிமன்றத்தின் தன்னிச்சையான அதிகாரத்தின்படியோ நீதிமன்றத்தால் செயல்படுத்த இயலும். ஆனால், இவ்வழக்கின் வழக்குரையில் 2ம் வாதியாக கூறப்பட்டுள்ள தரப்பினரை 4ம் பிரதிவாதியாக சேர்க்கவேண்டியதென வழக்கின் நெடும் மற்றும் குறும் தலைப்பில் மட்டும் திருத்தம் செய்து, வழக்குரை சங்கதிகளில் 1, 2 வாதிகள் என குறிப்பிட்டு கூறப்பட்டுள்ள சங்கதிகளில் எவ்வித திருத்தமும் செய்யவில்லை எனில் அது வழக்குரை சங்கதிகளில் தெளிவற்ற நிலையை ஏற்படுத்திவிடும். எனவே, மேலமை நீதிமன்றத்தால் வாதிகள் தரப்பில் வழக்குரையில் திருத்தம் செய்ய உரிய மனுவினை தாக்கல் செய்யலாம் என்ற சுதந்திரத்துடன் அசல் வழக்கானது மீட்டனுப்புகை செய்யப்பட்டிருப்பினும், செய்யப்பட வேண்டிய திருத்தல் பகுதியினை பரிசீலித்து, இந்த திருத்தல் மனுவில் சட்டத்தின்படி தீர்வு காண வேண்டியது இந்நீதிமன்றத்தின் கடமையாகும். எனவே, இம்மனுவில் கோரியுள்ள செய்யப்பட வேண்டிய திருத்தங்களானது இயற்கை நீதிக்கு முரண்பட்டுள்ளதூடன் வழக்கின் தீர்வினை பாழாக்கிவிடும் என்பதால், இந்நீதிமன்றத்தால் திருப்தியுறாத நிலையில் இம்மனுவானது தள்ளபடி செய்யப்பட வேண்டியது நீதியின் நலனுக்கு உகந்தது என இந்நீதிமன்றம் தீர்மானிக்கின்றது.□

4.The learned counsel appearing for the petitioner submits that as there is an open remand and also for a fresh trial, there cannot be any impediment for amendment to plaint. That apart it is submitted that the suit is of the year 2017 and no prejudice will be caused, if the



amendment was allowed. However, the Court has wrong dismissed the petition for amendment.

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5.Per contra the learned counsel appearing for the respondents would submit that the order is well reasoned and does not require any interference. That apart it is submitted that the petitioner cannot transpose the second plaintiff as third defendant without filing appropriate application. It is submitted that the impugned order does not call for interference and therefore, prayed for dismissal of civil revision petition.

6.Further the learned counsel appearing for the respondents submits that the trial Court may be directed to dispose the suit as expeditious as possible.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

8.The law in the subject relating to amendment to pleading has been recently explained by the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India Vs Sanjeev Builders Private Limited and others*** (Civil Appeal No.5909 of 2022). The reading of the above decision indicates that pre trial amendment has to be allowed



liberally.

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9.As the judgment and decree of the trial Court dated 31.08.2018, stands completely effaced and since fresh trial has been ordered, it has to be construed that the amendment that was sought for by the petitioner is an amendment prior to trial. Therefore, the Court ought to have been liberal in allowing the application. The impugned order passed by the Sub Court, Aranthangi is liable to be interfered with.

10.Accordingly, the impugned order is set aside. Consequently, I.A.No.306 of 2022 stands allowed. However, the petitioner will have to file appropriate application for transposing the second plaintiff as the fourth defendant in the above suit. The Sub Court, Aranthangi shall dispose of O.S.No.42 of 2017 as expeditiously as possible preferably within a period of 15 months from the date of receipt of a copy of this order. Liberty is given to the respondents to file additional written statement and the Court shall frame additional issues and proceed in accordance with law.

11.Therefore, this Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.



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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Mrn

C.SARAVANAN,J.

Mrn

To

- 1.The Sub Judge, Aranthangi, Pudukkottai District.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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