

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-08-2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P. (PD) No.3275 of 2015

And

M.P.No.1 of 2015

E.K.Palanisamy

.. Petitioner

Vs.

1.P.C.Krishnan
2.A.Balasubramaniam
3.C.Balachandran
4.Rajammal

Angayammal (died)

5.M.Thangaraj
6.Ranganatha Gopal
7.M.Geetha

Vijaya (died)

8.N.Selvakumar
9.Kirandevi
10.Premlatha
11.N.Karikalan

.. Respondents

Civil Revision Petition is preferred under Article 227 of the Constitution of India against the fair and decretal order dated 20.7.2015 and made in I.A.No.214 of

2014 in O.S.No.228 of 2012 on the file of the II Additional District Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondent-1 (Caveator) : Mr.R.Sivaprakasam

For Respondents-2 to 11 : Notice dispensed with.

ORDER

The revision petitioner is the first defendant in the suit in O.S.No.228 of 2012 on the file of the II Additional District Court, Erode. There are 12 other defendants.

2. The first respondent herein is the plaintiff.

3. The suit is for declaration and for recovery of possession of suit schedule property. There is also a prayer for permanent injunction from alienating, encumbering or making any alteration or additions in the suit schedule property.

4. While-so, the first respondent/plaintiff filed I.A.No.214 of 2014 in O.S.No.228 of 2012 under Order VI, Rule 17 CPC for amendment of the plaint.

5. The first respondent/plaintiff sought to insert paragraph 10-A in the plaint alleging that defendants 2 to 13 trespassed into the suit property and made construction thereon and that the construction is illegal and the same has to be removed before delivery of possession is ordered.

6. The aforesaid pleading is sought to be inserted in the plaint.

7. The first respondent/plaintiff also wanted to add two lines in paragraph 11 about the trespass and illegal construction put up by the defendants 2 to 13.

8. Thereafter in the prayer of the suit, the following prayer is added:-

"Directing the defendants 2 to 13 to remove the super structure they have put up at their cost within a time to be specified by this Hon'ble Court and in case of non-compliance directing delivery of the suit properties to the plaintiff with existing superstructures."

9. The Trial Court passed order in I.A.No.214 of 2014 in O.S.No.228 of 2012 dated 20.7.2015 permitting the aforesaid amendment. The revision petition is as against the aforesaid order.

10. The learned counsel for the petitioner/first defendant has strenuously contended that the amendment ought not to have been allowed and has further submitted that the amendment needs to be rejected in view of the law of limitation.

11. In fact, the said plea was raised before the Trial Court. The Trial Court went deep into it and answered against the revision petitioner. It had traced the entire facts relating to the issues and came to the conclusion that the amendment has to be allowed.

12. I have considered the submissions made by the learned counsel for the petitioner and I do not find any merit in the submissions made by the learned counsel for the petitioner as the issue relating to alteration made in the plaint was well considered by the Trial Court.

13. The Trial Court also held that the amendment is sought before the commencement of trial. The Trial Court also held that if it is not done, it will lead to multiplicity of proceedings and the plaintiff will be forced to file a further suit for removal of the building construction made by the defendants illegally, if the plaintiff succeeds in the suit. The Trial Court has categorically held that the plaintiff should be given reasonable opportunity to prove his case in trial and no prejudice will be caused to the revision petitioner/first defendant if the amendment sought is allowed.

14. The Trial Court had gone into the contentions of both the parties in detail and has held that the plaintiff came into possession of the suit property on 5.11.2001 after the purchase of the suit property from one J.Suddanandam and 12 others through a registered Sale Deed document No.4898 of 2003.

15. According to learned counsel for the petitioner/first defendant, as per the version of the plaintiff, D-2 to D-13 trespassed into the suit property after 5.11.2001 when the first respondent/plaintiff was in possession of the suit property by his vendors.

16. When the revision petitioner produced Exs.R-1 to R-29 to show that the construction was made prior to 5.11.2001, the Trial Court gave its categorical finding that the genuineness, veracity and contents of those documents have not been tested by subjecting them to scrutiny and cross-examination by the plaintiff and it can be done only during the trial and Exs.R-1 to R-29 can be relied upon only after proving the same.

17. The Trial Court also correctly held that if the application for amendment is rejected by accepting Exs.R-1 to R-29 without subjecting them to cross-examination, the same will cause serious prejudice to the plaintiff.

18. I am in entire agreement with the reasonings given by the Trial Court. If the application for amendment is rejected, the same would cause serious prejudice to the plaintiff and no prejudice will be caused to the revision petitioner/first defendant.

19. In view of the above findings of the Trial Court, the plea of limitation cannot be helpful to throw

away the amendment application. Hence, the judgment relied on by the learned counsel for the petitioner in ***Voltas Limited vs. Rolta India Limited*** {(2014) 4 SCC 516} has no application in terms of Order VI, Rule 17 CPC.

20. At this juncture, the learned counsel for the revision petitioner/first defendant has submitted that the revision shall be permitted to file additional written statement based on the amendment of plaint. It is needless to state that the revision petitioner has a right to file his additional written statement refuting the allegations, if any, relating to the amended plaint.

21. The learned counsel for the first respondent/Caveator has submitted that the revision petitioner/first defendant failed to file additional written statement in time and hence could not be permitted to file additional written statement. I am not in agreement with the same.

22. The Trial Court is directed to receive the additional written statement within a period of three weeks from the date of receipt of a copy of this order.

23. For the foregoing reasons, the Civil Revision

Petition fails and the same is dismissed. No costs.
Consequently, connected miscellaneous petition is also
dismissed.

Index : Yes/No.
Internet : Yes/No.
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18-08-2015

To

The II Addl. District Court,
Erode.

D.HARIPARANTHAMAN, J.

Svn

CRP (PD) 3275 of 2015

18-08-2015