

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2015

CORAM

THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(PD)No.4073 of 2015 and
M.P.No.1 of 2015

V.Kirubananthan

... Petitioner

vs.

T.V.S.Sivaperumal

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed by the District Munsif Court, Katpadi, Vellore District, dated 13.08.2015 passed in I.A.No.521 of 2015 in O.S.No.616 of 2009.

For Petitioner : Mr.S.Rajendrakumar for
M/s.Norton and Grant

ORDER

The revision petitioner is the defendant in O.S.No.616 of 2009 on the file of District Munsif Court at Katpadi in Vellore District. The respondent herein is the plaintiff therein.

2. The respondent herein filed the suit for permanent injunction restraining the petitioner from interfering with the peaceful possession and enjoyment of the 'A' and 'B' schedule properties with the way right.

3. Thereafter, the respondent/plaintiff filed I.A.No.521 of 2015 in O.S.No.616 of 2009 for the following reliefs:-

- i) amendment of plaint;
- ii) to declare the plaintiff's right title, interest over the plaint 'C' schedule property and
- iii) for mandatory injunction against the defendant to demolish the wall, which is in S.No.57 in Senur Village to the extent in south side (East to West) 3 meter wide wall to the height of 4 feet, in S.No.274/3 at Karasamangalam Vikillage in North side (East to West) to the extent of 3 meters wide fence made up of Kambi, wooden sticks by the defendant and to direct the defendant to allow the plaintiff and his school children to use the 'C' schedule property as common way.

4. The respondent/plaintiff also sought amendment in the body of the plaint, that is he sought to add 'C' Schedule and sought a declaration that he has right title and interest over the 'C' Schedule property. 'C' schedule is nothing but pathway of 3 meter.

5. According to the respondent/plaintiff, the revision petitioner/defendant put up a wall in the path, to which he has right title and interest.

6. The Trial Court allowed the application in I.A.No.521 of 2015 on 13.08.2015. Hence, the petitioner has come up with this petition.

7. The learned counsel for the petitioner has vehemently contended that plaintiffs' side evidence was over and D.W.1 is in box and he is facing cross examination and at this stage, respondent/plaintiff cannot seek amendment of the plaint. The learned counsel for the petitioner has further contended that as per proviso to Order 6 Rule 17 of C.P.C., the respondent/plaintiff failed to show due diligence in seeking amendment. Though the trial Court has noted that application was filed at a belated stage, it allowed the application by imposing cost.

8. I have considered the submissions made by the learned counsel for the petitioner.

9. It is useful to extract Order VI Rule 17 of CPC:-

"17. Amendment of Pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of deciding the real question in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite diligence the

party could not have raised the matter before the commencement of trial."

10. It is true that the respondent/plaintiff should have been prudent enough by filing an application for amendment at an earliest point of time. The Trial Court taking into account the facts and circumstances of the case as well as Order VI Rule 17 CPC, which provides for amendment at any stage of the proceedings allowed the amendment petition in order to avoid multiplicity of proceedings.

11. In the case on hand, earlier, the respondent/plaintiff sought for a bare injunction seeking to restrain the revision petitioner/defendant from interfering with the peaceful possession and enjoyment of his right in the path way. Pathway was not made as a schedule of property. Further more, respondent/plaintiff did not seek for any declaration as well as did not seek for mandatory injunction to demolish the wall that is allegedly raised in the pathway. Subsequently, at the stage of cross examination of D.W.1, the plaintiff wanted to brought amendment as stated above.

12. In the original plaint, he pleaded about the path but he did not give a separate schedule for the path. Now plaintiff wanted a declaration and wanted to demolish the wall said to have been put up by the defendant in the common pathway. In these circumstances, though D.W.1 is in the box, the Trial Court thought to permit the plaintiff to amend the plaint by

compensating the revision petitioner by awarding cost of Rs.2000/-.

13. It is well settled that Order VI Rule 17 CPC provides for amendment at any stage of the proceedings and the same cannot be whittled down by the Proviso, particularly, if a case is made out by the parties.

14. In the facts and circumstances of the case, the Trial Court thought fit to allow the amendment. I do not find any infirmity in the order passed by the trial Court. The Civil Revision Petition fails and accordingly, the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.10.2015

Index : Yes/No

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To

The District Munsif, Katpadi

D.HARIPARANTHAMAN,J.,

svki

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