



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23 - 02 - 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

CRP (PD) (MD) No. 1646 of 2011
and

M.P. (MD) No. 1 of 2011

Nandagopal Chettiar

..Petitioner/Respondent/Defendant

Vs.

Natarajan Chettiar

..Respondent/Petitioner/Plaintiff

PRAYER: Petition under Article 227 of the Constitution of India against the order passed in I.A. No. 440 of 2011 in O.S. No. 1 of 2006 dated 21.07.2011 on the file of the District Munsif, Ramanathapuram.

For Petitioner: Mr. V. Sitharanjandas

For Respondent : Mr. K. Mahendran

ORDER

The defendant in O.S. No. 1 of 2006, has projected the present Civil Revision Petition challenging the order dated 21.7.2011 passed by the learned District Munsif, Ramanathapuram, in I.A. No. 440 of 2011 in O.S. No. 1 of 2006 wherein and by which the petition filed by the plaintiff for amendment of the plaint was allowed on terms.

2. The plaintiff / respondent herein filed suit O.S. No. 1 of 2006 for bare injunction restraining the defendant from demolishing the staircase in the suit first schedule and from interfering with the usage of the same by him and also for an injunction restraining the defendant from putting up any construction in suit second schedule. Pending suit, the plaintiff filed I.A. No. 440 of 2011 for amendment of the plaint. According to the plaintiff, when the suit was pending, the defendant had raised a wall and erected a shutter in the suit first schedule property which was used by them in common. It is stated that the said act of the defendant is subsequent to the filing of the suit and the wall and shutter erected pending suit, is having access to him to go to his shop.

3. The defendant opposed the said application stating that in the suit first schedule property, the ground floor, first floor and the portion under the staircase were allotted to the defendant in a compromise decree in O.S. No. 156 of 1999. While so, the plaintiff had come up with the above application as if a wall was raised by him pending suit which has got no door in it. It is further stated that pursuant to the compromise decree, he had already put a grill gate, wooden doors and shutters in the ground floor of the first schedule property and the plaintiff also acquiesced to the said acts without raising any objection. Therefore, according to the defendant, the amendment sought for, is not subsequent to the filing of the suit but it is only enhancing the pleadings already filed by the plaintiff.



4. Learned District Munsif, Ramanathapuram, on consideration of the arguments advanced by the learned counsel and the materials available thereon, allowed the said amendment on payment of Rs.500/- to the defendant. Aggrieved by the same, the present revision has been filed by the defendant.

5. Heard the learned counsel appearing for the parties and perused the records.

6. The only question that needs consideration before this Court is whether the amendment can be allowed to stand.

7. Learned counsel appearing for the petitioner contended that the lower Court has, by allowing the amendment, permitted the opposite party to introduce a totally new and inconsistent case and a new cause of action and thereby, has acted in the exercise of its jurisdiction illegally and with material irregularity.

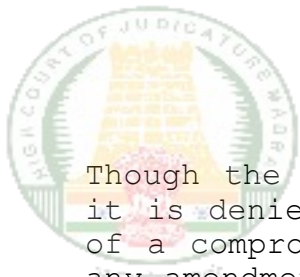
8. Before considering the factual details and the materials placed by the plaintiff praying for amendment of plaint, it is useful to refer Order VI Rule 17 CPC which is as under:-

*"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 determining the real questions 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 of due diligence, the party could not have raised the matter before the commencement of trial."

9. 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. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

10. Coming to the factual aspect of the case, as stated earlier, according to the plaintiff, when the suit was pending, the defendant had blocked the passage by raising the wall and fixing a door which resulted in denying access to him. The defendant objected to the amendment stating that as evidence of the plaintiff - P.W.1 has already commenced, the amendment cannot be allowed as it will become post-trial amendment.



Though the plaintiff has contended that the construction was subsequent, it is denied by the defendant on the ground that the same was by virtue of a compromise in the year 1999 in O.S. No. 156 of 1999. However, any amendment that is allowed, according to the defendant, will date back to the date of the petition.

11. In any amendment proceeding, it has to be seen as to whether it is prior to the suit or after the filing of the suit and if there is any change of circumstance so as to curtail multiplicity of litigations. Admittedly, the suit is only for a bare injunction restraining the defendant from putting up any construction. But now the amendment sought for is subsequent to the suit. The plaintiff and the defendant have altered the structure. In strict view of the said aspect, the amendment does not totally alter the character or the cause of action. Hence, the same can be allowed.

12. Two principles have to be considered while allowing the amendment application. Firstly, the character of the suit should not be altered and no new cause of action can be introduced; and secondly, care should be taken that no serious prejudice or injustice is caused to the opposite party on the pretext of amendment. It is, of course, settled principle that there is no injustice caused in granting an amendment if the opposite party can be compensated in terms of money.

13. In the instant case, the trial Court has allowed the application for amendment on payment of Rs.500/- payable to the defendant. It is also pertinent to point out at this juncture that merely because the amendment is allowed, it does not automatically entitle plaintiff to get the relief. Though the learned counsel for the petitioner contended that the trial Court failed to see whether the plaintiff is entitled to the relief asked for in the application, it is made clear that the merits of the amendment cannot be gone into in the interlocutory stage and only after trial, the merits of the amendment can be gone into by the Courts and accordingly, decide the dispute in issue. As only P.W.1 has gone into the box and the plaintiff also pleads that it is a subsequent event after the filing of the suit, in the considered opinion of this Court, no prejudice would be caused to the defendant if the amendment which is allowed by the trial Court, is permitted to stay.

In the result, the *Civil Revision Petition fails and the same stands dismissed* and the amendment for the relief of mandatory injunction allowed by the trial Court, is confirmed. It is open to the petitioner / defendant to file additional written statement and proceed with the trial of the suit. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Per Admn)

/True copy/

Sub Assistant Registrar

To

The District Munsif, Ramanathapuram.

+1cc to Mr.K.Mahendran, Adocate in SR.8164

+1cc to Mr.V.Sitharanjandoss, Advocate in SR.8054

C.R.P. (PD) (MD) No. 1646 of 2011

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