

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2481/2014

Vadivel : Petitioner

versus

Loganathan : Respondent

PRAYER: Revision filed against the order dated 23.4.2014, in I.A.No.303 of 2014 in O.S.No.148 of 2011 on the file of the District Munsif Court, Harur, Dharmapuri District.

For petitioner : Mr.P.Muthusamy

For respondent : Mr.J.Hariharan,
for Mr.V.Nicholas

ORDER

The petitioner initially filed a suit for injunction, in respect of his right of pathway. The suit was contested by the respondent by filing written statement.

2. The petitioner after completion of cross examination of P.Ws. 1 and 2, filed an application in I.A.No.303 of 2014 for amendment of the plaint for the purpose of incorporating a plea regarding declaration. The application was opposed by the respondent.

3. The learned trial Judge having found that the petitioner took several

adjournments for producing witnesses and filed the application belatedly, dismissed the application. The said order is under challenge in this civil revision petition.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. The petitioner in his plaint in O.S.No.148 of 2011 has taken up a specific contention that his predecessor-in-interest has been using the path way in question for the last more than 100 years. The respondent on the other hand has taken up a contention that the petitioner has no such right and his predecessor-in-interest has not been using the pathway for such a long time.

6. It is true that the petitioner has not taken any action till he was cross examined by the respondent. The respondent in the written statement indicated that the suit for injunction is not maintainable without praying for a decree of declaration. It was only the said contention which made the petitioner to file the application for amendment. By way of this amendment, there is no possibility of changing the pleadings. The petitioner has already pleaded that his predecessor-in-interest has been using the pathway for ingress and egress. The only amendment now sought for is to incorporate a prayer for declaration. Neither the cause of action nor the case pleaded

earlier would change, by introducing the amendment as indicated in the application in I.A.No.303 of 2014. The learned Trial Judge dismissed the application only on the ground of delay. Delay alone cannot be a ground to defeat the right of the party in case he is otherwise entitled to seek his remedy at a later point of time. I am therefore of the view that the amendment sought for by the petitioner should be allowed.

7. In the result, the order dated 23 April 2014 is set aside. The application in I.A.No.303 of 2014 is allowed. The respondent shall be given time to file additional written statement. The learned trial Judge is directed to give an opportunity to the respondent to recall P.Ws.1 and 2 for further cross examination, if he is so advised.

8. The civil revision petition is allowed as indicated above. No costs. Consequently, M.P.No.1 of 2014 is closed.

06.10.2016

Index:Yes/no
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To

The District Munsif Court, Harur, Dharmapuri District.

K.K.SASIDHARAN, J.

(tar)

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