

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3336 of 2014
and M.P.No.1 of 2014

N.Krishnamoorthy
Power Agent of S.V.Venkatraman

... Petitioner

Vs.

S.Paulraj

... Respondent

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 05.02.2014 made in I.A.No.254 of 2012 in A.S.No.65 of 2011 now pending on the file of the Subordinate Judge, Poonamalee.

For Petitioner : Mr.N.Rajavadivelu

For Respondent : Mr.V.K.Rajagopalan

ORDER

Challenging the fair and final order passed in I.A.No.254 of 2012 in A.S.No.65 of 2011 on the file of the Subordinate Court, Poonamalee, the petitioner, who is the plaintiff in O.S.No.412 of 2003 on the file of the District Munsif cum Judicial Magistrate, Ambattur has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.412 of 2003 for permanent injunction.

3.The defendant filed his counter and contested the suit. After contest, the trial Court found that the plaintiff has not described the schedule of property properly and he has not produced any acceptable evidence to establish his case. After the dismissal of the suit, the plaintiff filed an appeal in A.S.No.65 of 2011 on the file of the Subordinate Court, Poonamallee. In the First Appeal, the plaintiff took out an application in I.A.No.254 of 2012 under Order 6 rule 17 of the Civil Procedure Code to amend the schedule of property. The application filed by the plaintiff was contested by the defendant/respondent. The Lower Appellate Court, taking into consideration the case of both parties, dismissed the petition.

4.The learned counsel for the petitioner submitted that the Lower Appellate Court ought to have allowed the application and permitted the plaintiff to amend the schedule of property at the belated stage.

5.In support of his contention, the learned counsel relied upon the following judgments:

(i)(2008) 3 Supreme Court Cases 717 [*Usha Devi Vs. Rijwan Ahamd and others*] wherein the Supreme Court allowed the amendment application, which was a pre-trial amendment sought for by the plaintiff.

(ii)AIR 1979 Supreme Court 551 [*Ishwardas Vs. The State of Madhya Pradesh and others*] wherein the Supreme Court held that the amendment of a written statement at a belated stage to enable the party to raise any plea is permissible.

(iii)AIR 1991 Punjab and Haryana 240 [*Sqn. Ldr. Gurdial Singh (Retd.) Vs. Gurdev Singh and others*] wherein the Punjab and Haryana High Court held that the amendment application cannot be rejected merely because the said application has been filed at a belated stage.

6.Countering the submissions made by the learned counsel for the petitioner, Mr.V.K.Rajagopalan, learned counsel appearing for the respondent submitted that a party is not entitled to seek for amendment as of right, particularly in appeal.

7.In the case on hand, the petitioner has not given any reason for not filing an application before the trial Court. In the absence of any reason

given by the petitioner for not filing the application at the earliest point of time, the petition was rightly dismissed by the Lower Appellate Court. That apart, the trial Court dismissed the suit on the ground that the schedule of property was not given properly by the plaintiff. When the trial Court had dismissed the suit finding that the schedule of property was not described properly, the plaintiff cannot seek for amendment of the schedule of property at a belated stage after the dismissal of the suit. In these circumstances, the Lower Appellate Court has rightly dismissed the petition. Since the facts and circumstances differs from the case on hand, the judgments relied upon by the learned counsel for the petitioner are not applicable to the present case.

8. In these circumstances, I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

27.01.2016

To

The Subordinate Judge,
Poonamalee.

M.DURAIWAMY,J.

va

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