

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.No. 1730 of 2016AndC.M.P.No.9200 of 2016

K.Veerasingam ... Petitioner/Petitioner/plaintiff

Versus

S.Kesavan ... Respondent/Respondent/Defendant

**PRAYER**: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in I.A.No. 701 of 2013 in O.S.No. 87 of 2011 dated 03.02.2016 on the file of District Munsif Court, Sirkali (Full Additional In charge) Principle District Munsif Judge, Mayiladuthurai.

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For Petitioner : Mr. B.Vijay

For Respondent : Mr.S.Sounthar

**O R D E R**

The petitioner initially filed a suit for injunction. Subsequently and more particularly after commencement of the trial, he filed an application for amendment of the plaint. The petitioner wanted to amend the plaint for the purpose of seeking the relief of recovery of possession. The application was

opposed by the respondent. The learned trial Judge having found that there was misrepresentation and suppression of material particulars, dismissed the application. Feeling aggrieved, the petitioner is before this Court.

2. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

3. There is no dispute that the petitioner initially filed a civil suit for injunction. The title of the petitioner is not in dispute. According to the respondent, the petitioner executed a sale agreement and he is in possession on the strength of the said agreement.

4. The petitioner initially projected a case as if he is in possession of the property. Subsequently when examined as PW-1, the petitioner admitted that the respondent is in possession of the property. It was only at that point of time, the petitioner filed the application for amendment of the plaint.

5. The trial Judge found that there was suppression of material particulars. Even then, the petitioner should not be denied of an opportunity to contest the claim on merits.

6. The respondent is contending that he is in possession of the property on the strength of a document which is in the nature of a sale agreement executed by the petitioner. The petitioner wanted a decree for recovery of possession. It is always open to the respondent to contend that the suit for recovery of possession is barred by limitation.

7. According to the petitioner, the counsel for the petitioner is a moffusil lawyer and as such he failed to incorporate the necessary particulars in the application for amendment. The contention taken by the learned counsel for the petitioner is fully supported by the affidavit filed by the petitioner. I am therefore of the view that to do justice to the parties, the amendment requires to be allowed.

8. In the result, the order dated 03.02.2016 in I.A.No. 701 of 2013 in O.S.No. 87 of 2011 is set-aside. The application for amendment is allowed. It is open to the respondent to file an additional written statement. All the contentions on merits are left open to be decided in the suit.

9. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

26.09.2016

vsg



**K.K.SASIDHARAN, J.**

vsg

To

District Munsif Court, Sirkali  
(Full Additional In charge)  
Principle District Munsif Court, Mayiladuthurai.

**C.R.P.No. 1730 of 2016**

**And**

**C.M.P.No.9200 of 2016**

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