

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

**CRP (PD) No.2044 of 2013
and
M.P.No.1 of 2013**

Parthiban

.. Petitioner

Vs.

Shakul Hameed

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.10 of 2013 in O.S.No.3 of 2011 dated 13.02.2013 on the file of the Principal District Munsif Court, Chidambaram.

For Petitioners	: Mr.T.Sezhian
For Respondent	: M/s.S.B.Faziruddin & F.Ghouse Mohideen

ORDER

The Revision Petitioner/Respondent/Defendant has preferred the instant Civil Revision Petition before this Court as against the order dated 13.02.2013 in I.A.No.10 of 2013 in O.S.No.3 of 2011 passed by the Learned District Munsif, Chidambaram.

2.The Learned District Munsif, Chidambaram, while passing the impugned order in I.A.No.10 of 2013 in O.S.No.3 of 2011 on 13.02.2013 (filed by the Respondent/Plaintiff/Petitioner under Order 6 Rule 17 of the Civil Procedure Code) at paragraph 6 had among other things observed that the Respondent/Plaintiff had filed the present amendment petition within one month from the date of filing of the additional written statement by the Revision Petitioner/Defendant and that, only on account of the objection of the Revision Petitioner/Defendant, the Respondent/Plaintiff had filed the present petition and for filing of the present petition, there is prima-facie case and by amending the plaint for the relief of "'Declaration', no new cause of action had arisen" etc., and resultantly, allowed the petition with costs. Challenging the order passed by the trial Court in I.A.No.10 of 2013 in O.S.No.3 of 2011 on the file of the trial Court, the Revision Petitioner/Respondent/Defendant has filed the present Civil Revision Petition mainly contending that the trial Court had overlooked the very vital fact that the amendment sought for by the Respondent/Plaintiff/Petitioner in I.A.No.10 of 2013 was a post trial amendment and further, it was only filed to fill up the lacuna of the Respondent/Plaintiff's case.

3.The Learned counsel for the Revision Petitioner/Defendant urges before this Court that the Respondent/Plaintiff/Petitioner had originally filed one amendment application before the trial Court (seeking amendment of Schedule) which was allowed by the trial Court and for the second time, the I.A.No.10 of 2013 in O.S.No.3 of 2011 on the file of the trial Court, the Respondent/Plaintiff/Petitioner had filed the said petition seeking to amend the plaint whereby and whereunder a relief of Declaration was sought for, which is a belated one.

4.Furthermore, the said I.A.No.10 of 2013 in O.S.No.3 of 2011 (on the file of the trial Court) filed by the Respondent/Plaintiff/Petitioner is at the stage of arguments to be heard and in the main case, the said stage was set in the year 2012 for arguments and only during the year 2013, the Respondent/Plaintiff/Petitioner was perforced to project I.A.No.10 of 2013 in the present case on hand.

5.Advancing his arguments, the Learned counsel for the Revision Petitioner/Defendant takes a plea that the trial Court had ignored an essential fact that the amendment application I.A.No.10

of 2013 would vary the nature of the suit in O.S.No.3 of 2011 filed by the Respondent/Plaintiff i.e., the Respondent/Plaintiff/Petitioner initially had filed the main suit seeking a relief of injunction and only in I.A.No.10 of 2013 by an inordinate delay, the relief of Declaration was sought for, in respect of the Plaint Schedule Property in question.

6.Per contra, it is the submission of the Learned counsel for the Respondent/Plaintiff/Petitioner that the trial Court had rightly allowed the I.A.No.10 of 2013 permitting the Respondent/Plaintiff/Petitioner to amend the plaint, insofar as the relief of Declaration is concerned and the same need not be displaced by this Court at this distance point of time.

7.At this juncture, the Learned counsel for the Revision Petitioner/Defendant seeks in aid of the decision of this Court in ***P.Subba Naicker Vs. Veluchamy Naicker and three others*** reported in ***2004 (2) CTC at page 742***, whereby and whereunder at paragraphs 4 and 5, it is observed and held as under:

"4.Apart from the above factual details, it is to be noted that after the Amendment Act,

2002 (which came into force with effect from 01.07.2002, 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. Admittedly, the petition for amendment-I.A.681/2003 was filed only on 30.06.2003 i.e., well after the amendment Act, 2002. As a matter of fact, only when P.W.1 was in the witness box, the plaintiff thought of filing petition for amendment and filed the same on 30.06.2003. In the light of the proviso to Rule 17 of Order 6 of the Code of Civil Procedure and of the fact that the petitioner has not satisfied the Court that he is entitled to file such a petition even after the commencement of the trial, as rightly argued by the learned counsel for the respondent, the application for amendment is liable to be rejected. Even otherwise, I am satisfied with the reasoning of the learned District Munsif in dismissing the application for amendment.

5. In the light of what is stated above, I do not find any error or infirmity in the order impugned for interference; accordingly, the

Civil Revision Petition fails and the same is dismissed. No costs. Consequently, C.M.P.No.17255 of 2003 is closed."

8.It is to be noted that the amendment sought for by a party ought to be allowed by a Court of Law when the amendment sought for is very much essential for resolving the controversies between the parties in a suit. Furthermore, it is to be borne in mind, that the amendment sought for, ought not to alter the cause of action on the basis of which original suit was instituted. However, a Court of Law should not allow an inconsistent/contrary averment in negation to the admitted facts or mutually destructive allegation of facts by means of amendment.

9.Added further, a Court of Law is to see a prospective amendment should not cause hardships or prejudice or misery to the other side which cannot be compensated by means of costs.

At this stage, this Court has made a cursory perusal of the averments of the plaint filed by the Respondent/Plaintiff before the trial Court. As a matter of fact, in the plaint, the Respondent/Plaintiff at the time of filing (has sought for passing of

a decree for permanent injunction in his favour and thereby restrained the Defendant, his men, agents etc., from in any manner blocking common passage in the first and second floors and also in anywhere in the suit property etc. In this connection, it cannot be brushed aside that the Respondent/Plaintiff in the original suit in O.S.No.3 of 2011 (at the time of filing had not claimed a relief of Declaration). Significantly, the Revision Petitioner/Defendant in the written statement (filed before the trial Court) had taken a categorical plea that the Respondent/Plaintiff had not claimed any enjoyment right in the Revision Petitioner/Defendant's property. Moreover, the Respondent/Plaintiff had no right whatsoever, in the property. Even in the additional written statement filed by the Revision Petitioner/Defendant, the Petitioner/Defendant had in a crystalline fashion mentioned that in the second floor when a relief of permanent injunction was sought for in respect of a right of way, then the Respondent/Plaintiff should have claimed the relief of Declaration and further, for the Relief of said Declaration, he should have paid the requisite Court fee. That apart, in the absence of not seeking the relief of Declaration, the suit filed by the Respondent/Plaintiff is not maintainable.

10. On a careful consideration of respective contentions and in view of the fact that originally, the Respondent/Plaintiff had sought a relief of permanent injunction and filed a petition (for amending the Schedule of the plaint) and subsequently, filed I.A.No.10 of 2013 in O.S.No.3 of 2011 seeking amendment of plaint for Declaratory relief, then the same was rightly allowed by the trial Court but the trial Court had not taken into account of an important fact that the main suit in O.S.No.3 of 2011 was itself ready for arguments and when the suit itself was ready for arguments, only in the year 2013, the Respondent/Plaintiff/Petitioner filed I.A.No.10 of 2013 belatedly and for belated filing of said I.A.No.10 of 2013, this Court opines that the Respondent/Plaintiff/Petitioner is to be saddled with costs of Rs.1500/- and accordingly, saddles the Respondent/Plaintiff/Petitioner with costs of Rs.1500/- to be paid by him directly or in person to the Learned counsel for the Revision Petitioner/Defendant within a week from today. Consequently, the Revision Petition fails.

11. In the result, the Civil Revision Petition is dismissed and the order dated 13.02.2013 passed by the trial Court is affirmed by this Court for the reasons assigned above. Consequently,

connected Miscellaneous Petition is also closed. No costs.

12.Further, liberty is granted to the Revision Petitioner/Defendant to file an additional written statement if any (subsequent to the allowing of I.A.No.10 of 2013 by the trial Court) and the said additional written statement if any, is to be filed by the Revision Petitioner/Defendant within a week from today. In case, if the trial Court opines that any additional issues are to be framed, then it can frame the same (consequent to the allowing of I.A.No.10 of 2013). Also, if situation so warrants the trial Court may permit the respective parties to adduce oral and documentary evidence in regard to the Declaratory relief sought for by the Respondent/Plaintiff. Since the main suit itself is pending for arguments from the year 2012, this Court in furtherance of substantial cause of justice, directs the trial Court to complete the arguments and to dispose of the main suit in O.S.No.3 of 2011, within a period of three months from the date of receipt of a copy of this order.

04.02.2016

Index : Yes

Internet : Yes
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M.VENUGOPAL, J.

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To

- 1.The Learned District Munsif,
Chidambaram.
- 2.The Registrar (Judicial)
[for favour of Information &
to Watch and Report],
Madras High Court.

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