

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2016

CORAM:

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

CRP (PD) No.2799 of 2016
and C.M.P.No.14252 of 2016

S.Jayaprakash

... Petitioner

Versus

1. K.Natarajan
2. Meenakshi Natarajan
3. M/s.Cera Gen Park Health Care Centre,
Rep. by its Proprietor
Selvi Jaisudha
18/2 Ground Floor, Bharathi Salai,
Chennai – 600 005.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.08.2016 in I.A.No.2769 of 2016 in O.S.No.9063 of 2010 on the file of the VI Additional City Civil Judge, Chennai.

For Petitioner : Mr.R.Selvakumar

For R1 to R3 : No appearance

ORDER

The petitioner filed a suit in O.S.No.9063 of 2010 before the VI Additional City Civil Court, Chennai, praying for a decree of declaration and mandatory injunction. The suit was contested by the respondents by filing written statement.

2. The petitioner, after the conclusion of evidence and posting the matter for arguments, filed an application in I.A.No.2769 of 2016 for amendment of plaint. The application was dismissed by the trial Court on the ground of delay. The said order is under challenge in the Civil Revision Petition.

3. Heard the learned counsel appearing for the petitioner. None appears on behalf of respondents 1 and 2, in spite of an attempt made by the petitioner to serve notice. The endorsement made by the postal authorities indicates that the respondents 1 and 2 refused to receive summons. The respondents 1 and 2 are therefore deemed to have been served. None appears on behalf of the 3rd respondent.

4. The petitioner seeks an amendment of plaint only for the purpose of claiming future damages. The petitioner in his plaint originally claimed damages from 27.05.2007 to 01.11.2009 with interest at 21% p.a. Future damages was not specifically prayed for by the petitioner in the plaint filed in O.S.No.9063 of 2010. Therefore, she filed the application in I.A.No.2769 of 2016. Even after the amendment, the nature of the suit would remain as it. It was only for the purpose of claiming future damages, the petitioner filed the application for amendment. This aspect was not considered by the learned Trial Judge. The application was rejected primarily on the ground of delay. The delay alone cannot be a reason to reject such *bona fide* prayer.

I am therefore of the view that the impugned order is liable to be set aside.

5. The order dated 02.08.2016 is set aside. The application in I.A.No.2769 of 2016 is allowed. It is open to the respondents to file additional written statement, if they are so advised.

6. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

11.11.2016

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To

The VI Additional City Civil Judge,
Chennai.

K.K.SASIDHARAN, J.

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