



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.02.2016
CORAM

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.367 of 2016 (PD)
and
C.M.P. (MD) .No.1587 of 2016

Yesodha ... Petitioner
Vs.

Lalitha ... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 08.01.2016 made in I.A.No.677 of 2015 in O.S.No.357 of 2012 on the file of the learned Principal District Munsif, Kuzhithurai, Kanyakumari District.

For Petitioner :Mr.A.Robinson

ORDER

The petitioner is the defendant and the respondent is the plaintiff in the suit. The respondent has filed a suit in O.S.No.357 of 2012 for injunction restraining the petitioner and her men from trespassing into the property in Survey No.2828 in Re-survey No.306/3 situated at Muthukummal Village, Kollancode, Vilavancode Taluk, Kanyakumari District. The petitioner filed written statement and also filed counter claim petition to award a sum of Rs.50,000/- towards the damage committed by the respondent in respect of the petitioner's land in Re-Survey No.306/2 of Muthukummal Village and also for injunction restraining the respondent and her men from interfering with the peaceful possession and enjoyment of the property in Re-survey No.306/2. The petitioner filed I.A for amendment of counter claim to include the description of the property.

2.The respondent resisted the same and submitted that the relief sought for in the suit relates to re-survey No.306/3. The petitioner has not filed any document along with counter claim. If the petitioner seeks the relief with regard to the Re-Survey No306/2, only a separate suit has to be filed and there is no cause of action for counter claim in the present suit.

<https://hcservices.courts.gov.in/hcservices/>
3.The learned Judge, considering all the materials on record and also facts of the case, dismissed the petition filed by the



petitioner. Against which, the present civil revision petition has been filed.

4. The learned counsel appearing for the petitioner contended that it is well settled law that the Court must be liberal in considering the application for amendment. The delay in filing the petition is not fatal and in the interest of justice, amendment should be allowed. The party should not be made suffer due to procedural lapse. The respondent has paid the Court fee for counter claim and amendment sought for by the petitioner will not change the nature of claim and not introduce any new cause of action.

5. Heard Mr. A. Robinson, learned counsel appearing for the petitioner and I have carefully perused the entire materials on record.

6. From the materials it is seen that the trial of the suit is commenced. The respondent/plaintiff examined in chief, cross-examined and the plaintiff's side evidence was closed and it was posted for petitioner's side evidence. At that time, the petitioner has come out with the petition for amendment. In this petition, the petitioner sought for the relief of permanent injunction in respect of the property in Re-Survey No. 306/3 whereas the petitioner's claim with regard to the Survey No. 306/2. The petitioner has not given any valid reason for delay in filing the petition after commencement of trial. The learned Judge has considered all these aspects and dismissed the petition filed by the petitioner and there is no illegality and irregularity in the said order, which does not warrant any interference by this Court.

7. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Kuzhithurai, Kanyakumari District.

+1cc to Mr. A. Robinson, Advocate Sr. No. 8120

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AA/NGM-SS/03.03.2016/2p-3c

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