



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 03.06.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) .No.613 of 2016(PD)

and

C.M.P (MD) .No.2798 of 2016

1.Balaguru
2.Baskar
3.Srithar
4.Kabilan

.. Petitioners/Respondents/Defendants

vs.

Rajappa

.. Respondent/Petitioner/Plaintiff

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.12.2015 passed in I.A.No.631 of 2015 in O.S.No.13 of 2013 by the District Munsif Court, Thiruvaiyaru.

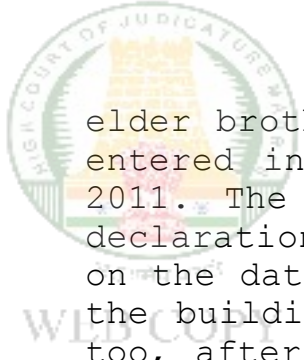
For Petitioner :Mr.G.Karnan

For Respondents :Mr.S.Rajaprabu

O R D E R

This revision is directed against the order dated 15.12.2015 passed by the learned District Munsif, Thiruvaiyaru in I.A.No.631 of 2015 in O.S.No.13 of 2013.

2.The respondent herein filed a suit in O.S.No.13 of 2013 against the petitioners for declaration and recovery of possession. The first petitioner filed another suit in O.S.No.24 of 2013 against the respondent for specific performance, based on the agreement dated 30.12.2011. While so, the respondent herein filed I.A.No.631 of 2015 in O.S.No.13 of 2013 under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint seeking demolition of the building constructed in the suit property. That application was resisted by the petitioners by filing a counter. The learned District Munsif, Thiruvaiyaru allowed the application on payment of cost of Rs.1,500/-. Aggrieved over the above said order, the present revision is filed.



elder brother of the first petitioner. A sale agreement has been entered into between them to sell the suit property in the year 2011. The respondent filed the suit in O.S.No.13 of 2013 for declaration and recovery of possession against the petitioner and on the date of filing the suit, he was well aware of existence of the building in the suit property. After waiving his right, that too, after completion of evidence on both sides, with an ulterior motive, the respondent herein filed a petition for amendment of plaint. It is further contended that the respondent has not assigned any valid reasons for amendment of plaint, but he has stated that only due to inadvertence, the present prayer is omitted to be included in the suit.

4.Per contra, the learned counsel for the respondent would submit that the suit was filed for declaration and recovery of possession and the respondent has paid the required Court fee for the relief sought for in the suit, however due to inadvertence, the prayer for demolition of the building was not included originally and that no prejudice would be caused to the respondents by amending the prayer.

5.It is settled law that the Court has to adopt liberal approach while considering the application for amendment of the plaint. In the case on hand, it is not in dispute that the respondent filed the suit for declaration and recovery of possession, but failed to include the prayer to demolish the existing building in the suit property and that application was rightly allowed on payment of cost of Rs.1,500/-. It is not the case of the petitioners that the prayer is barred by limitation. Further, the amendment would not change the nature and character of the suit and therefore, I do not find any illegality or irregularity in the order impugned in the Revision.

6.In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. However, the cost imposed by the lower Court is increased to Rs.2,500/-. The respondent herein shall pay the cost within a period of two weeks from the date of receipt of a copy of this order. It is open to the petitioner to file additional written statement, if they want to do so.

Sd/-

Assistant Registrar (CS-I)

/True Copy

Sub Assistant Registrar

To

The District Munsif, Thiruvaiyaru.

<https://hcservices.ecourts.gov.in/hcservices/>

+ 1 CC TO M/S.G.KARNAN, ADVOCATE IN SR No. 27807

+ 1 CC TO M/S.D.RAJA PRABHU, ADVOCATE IN SR No. 27708



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TE/SK-SKN/ : 24/06/2016 : 2P/4C
(PD)

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