



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) No.848 of 2016 and
C.R.P. (MD) No.849 of 2016 and
C.M.P. (MD) No.4323 of 2016

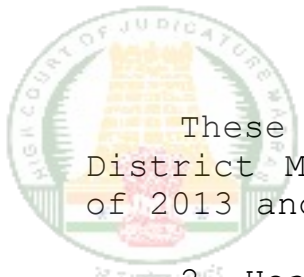
1 GUNAJOTHI
2 DEVASAGAYAM
3 ANBALAGAN
4 PONNUSAMY
5 TAMILSELVI ..PETITIONERS PETITIONERS/PLAINTIFFS IN
BOTH CRPs.

Vs

1 PREMA
2 BLOCK DEVELOPMENT OFFICER
PUDHUR TOWN PANCHAYATH.
3 THE PRESIDENT
SANKARALINGAPURAM VILLAGE PANCHAYATH.
4 THE STATE OF TAMIL NADU
REP BY DISTRICT COLLECTOR
TUTICORIN. ...RESPONDENTS/RESPONDENTS/DEFENDANTS IN
BOTH CRPs.

Prayer: Petition filed under Section 227 of Constitution of India, to set aside the Fair and Decreetal Order passed dated 22.09.2015 in I.A. No.27 and 28 of 2013 in O.S.No.7 of 2012 on the file of the learned District Munsif cum Judicial Magistrate, Vilathikulam and allow the CRP respectively.

For Petitioners : Mr.S.Vasudevan For S.Kadarkarai.
In both CRPs
For R-1 : Mr.A.Livisenthilkumar
in both CRPs
For R-2 to R-4 : Mr.G.Muthukannan
In both CRPs Government Advocate



These Revisions arise out of the orders passed by the learned District Munsif cum Judicial Magistrate, Vilathikulam, in I.A.27 of 2013 and I.A.No.28 of 2013 in O.S.No.7 of 2012.

2. Heard the learned counsel appearing for the petitioners and the learned counsel for the respondents and perused the entire materials available on record.

3. The petitioners are the plaintiffs in O.S.No.7 of 2012 on the file of District Munsif cum Judicial Magistrate, Vilathikulam. The suit was filed against the respondents for declaration and permanent injunction, restraining the respondents from put up the construction in the suit property. The petitioners filed applications in I.A.No.27 of 2013 and I.A.No.28 of 2013 to re-open the case and to amend the plaint, seeking relief of mandatory injunction and for recovery of possession. It is the case of the petitioners that pending suit, the first respondent has constructed a house in a portion of the suit property. The petitions were resisted by the respondents by filing a detailed counter. The learned District Munsif dismissed both the applications observing that the petitioners belatedly filed the applications.

4. Mr.Vasudevan, learned counsel for the petitioners would submit that while considering the application for amendment of the pleading, the Court shall take a lenient view and the object of amending the prayer is to minimise the litigation. However, the Trial Court by adopting hyper technical approach, dismissed application. The learned counsel has relied upon the Judgment reported in 2012 (5) CTC 803, Abdul Rehman and another Vs. Mohd. Ruldu & others in support of his contention.

5. Per contra, learned counsel for the respondents would submit that even in the written statement, the first respondent has specifically stated that she has already put up construction, despite the same the petitioners chose to file the application after two years. It is further submitted that the amendment can be considered liberally and the same liberal approach cannot be expected, when the application was filed, after commencement of the trial. The learned counsel has relied upon the Judgment of this Court in 2006 (1) CTC 55, Ahamed Meeran S. Vs. S.Kumaraswamy.

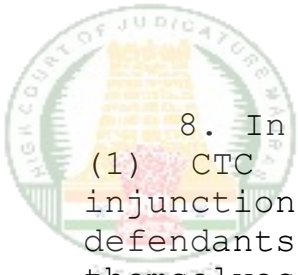
6. It is not in dispute that the petitioners have filed the suit for declaration and permanent injunction. In the application filed seeking for amendment of the prayer, it is specifically stated that after institution of the suit, the first respondent has constructed a building in portion of the property and that has



7. In 2012 (5) CTC 803, Abdul Rehman and another Vs. Mohd. Ruldu & others, the Honourable Supreme Court has held that the power to allow the amendment of pleading is wide and in the interest of justice, it can be permitted at any stage. It runs thus:-

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" 8. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added Proviso to prevent application for amendment being 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. The above Proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if Application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the Rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in J.Samuel and others V. Gattu Mahesh and others, 2012 (2) CTC 94 (SC): 2012 (2) SCC 300; and Rameshkumar Agarwal V. Rajmala Exports Pvt Ltd., and others, 2012 (2) MWN (Civil) 219 (SC) : 2012 (5) SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment."



8. In the case of Ahamed Meeran S. Vs. S.Kumaraswamy, (2006) (1) CTC 55, in that case a suit was filed for permanent injunction. In the written statement filed on 12.11.2002, the defendants denied the title of the plaintiffs claiming title for themselves through the Sale Deed registered on 20.02.1998. Despite the same, the plaintiffs have not taken any steps for amending the plaint and after conclusion of the trial, an application came to be filed for amendment of the prayer and in those facts, this Court has held that the amendment cannot be allowed, after conclusion of the trial.

9. In the instant case, as stated supra, the suit was filed for declaration and for permanent injunction. The present amendment is sought for mandatory injunction and recovery of possession, specifically alleging that during the pendency of the suit, the first respondent has put up construction in a portion of the suit property. So, this Court is of the opinion that the petition cannot be rejected at this stage and the rival contentions of the parties could be decided by the trial Court by appreciation of evidence. The Judgment relied on by the learned counsel for the respondents has no bearing to facts of this case and on the other hand, applying the principles laid down in 2012 (5) CTC 803, Abdul Rehman and another Vs. Mohd. Ruldu & others, the orders impugned in these Revisions have to be set aside.

10. In fine, the orders passed in I.A.No.27 of 2013 and I.A.No.28 of 2013 in O.S.No.7 of 2012, dated 22.09.2015 are set aside and the Civil Revision Petitions are allowed. No costs. It is open to the respondents, to file additional written statements. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To

The District Munsif cum Judicial Magistrate Court,
Vilathikulam.

Copy to: The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.

+1CC to M/S.A.Livis Senthil Kumar, Advocate, SR.No. 40843

+1CC to M/S.S.Kadarkarai, Advocate, SR.No. 40345

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