

In the High Court of Judicature at Madras

Dated : 24.4.2017

Coram :

The Honourable Ms.Justice V.M.VELUMANI

Civil Revision Petition (PD)No.1517 of 2017 & CMP.No.7066 of 2017

1.Sekar  
2.Murugan

Vs

Devendran

...Petitioners

...Respondent

PETITION under Article 227 of The Constitution of India against the fair and decreetal orders dated 06.1.2017 passed in I.A.No.1579 of 2015 in O.S. No.324 of 2010 on the file of the District Munsif Court, Thiruvallur.

For Petitioners : Mr.K.Balaji

ORDER

This Civil Revision Petition has been filed against the fair and decreetal orders dated 06.1.2017 made in I.A.No.1579 of 2015 in O.S.No.324 of 2010 on the file of the District Munsif Court, Thiruvallur.

2. The petitioners are the defendants and the respondent is the plaintiff in the said suit.

3. The respondent/plaintiff filed the said suit for a permanent injunction restraining the petitioners/defendants from interfering with his peaceful possession and enjoyment of the suit property.

4. Originally, the petitioners/defendants were set ex parte on 11.8.2011. Thereafter, the ex parte order was set aside on 31.1.2014 and the petitioners/defendants filed their written statement. Pursuant to that, issues were framed, the matter was posted for trial, evidence was let in on both sides and the trial was completed on 12.3.2015. At that stage, the respondent/plaintiff filed the present interlocutory application to amend the plaint to include the prayer for declaration. According to the respondent/plaintiff, he came to know about the plea of the denial of title by the petitioners/defendants at the time when the counsel was making preparations to argue the matter.

5. The petitioners/defendants filed a counter affidavit and opposed the said application by stating that they filed the written statement and after framing the issues, the evidence on behalf of both sides was completed and thereafter, the suit was posted for arguments. According to the petitioners/defendants, the respondent/plaintiff filed the application belatedly without giving any reason for filing the application at the earliest and the respondent has not stated that in spite of due diligence, he could not file the application for amending the plaint.

6. The learned Trial Judge, after considering the averments mentioned in the affidavit, counter affidavit and the facts that the written statement was filed only on 31.1.2014 and that the application for amendment was filed on 22.4.2015 i.e within the period of limitation, allowed the application on condition that the respondent/plaintiff should pay a cost of Rs.1,000/- to the

petitioners/defendants. As against this order, the above civil revision petition has been filed.

7. The grievance of the petitioners/defendants is that they filed their written statement on 31.1.2014. However, the respondent/plaintiff did not file the application for amendment immediately and he has not proved that in spite of due diligence, he could not file the application for amendment before commencement of the trial.

8. From the materials on record, it is seen that the petitioners/defendants were set ex parte on 11.8.2011. The petitioners/defendants filed the application to set aside the ex parte order on 29.10.2013 along with the written statement. The ex parte order was set aside on 31.1.2014 and the written statement filed by the petitioners/defendants was taken on file on the same day i.e. 31.1.2014. On 22.4.2015, the respondent/plaintiff filed an application for amendment to include the prayer for declaration. It is the grievance of the petitioners/defendants that the belated filing of the application for amendment is contrary to the well settled judicial pronouncements.

9. It is well settled that when the suit is filed for bare injunction and the defendants deny title of the plaintiff, it is open to the plaintiff to file an application for amendment of the pleadings seeking a decree for declaration of title. It is also well settled by the Apex Court that amendment can be ordered even in the second appeal stage. The learned Trial Judge, considering all the materials on record and the well settled judicial

pronouncements, allowed the application by giving cogent and valid reasons and by awarding costs of a sum of Rs.1,000/- to the petitioners/defendants. In such circumstances, I see no illegality or infirmity in the order passed by the Trial Court.

10. In the result, the above civil revision petition is dismissed. Consequently, the connected CMP is also dismissed.

24.4.2017

Internet : Yes

To  
The District Munsif Court, Thiruvallur.

RS

V.M.VELUMANI,J

RS

CRP.(PD)No.1517 of 2017  
and CMP.No.7066 of 2017

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