

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2017

CORAM:

The Hon'ble Mr.Justice S.M.Subramaniam

C.R.P.(PD) No.1589 of 2014

Mr.Kannan

...Revision Petitioner

Vs.

1. Mr.Rangan

2. Mr.Perumal

..Respondents

Civil Revision Petition, filed under Article 227 of the Constitution of India, against the order and decreetal order passed by the learned District Munsif, Sathyamangalam, in I.A.No.835 of 2013, in O.S.No.74 of 2013, dated 25.11.2013.

For Petitioner : Mr.M.Dhandapani

For Respondent-1 : Mr.N.Chinnaraj

ORDER

This Civil Revision Petition is filed, challenging the order and decreetal order passed by the learned District Munsif, Sathyamangalam, in I.A.No.835 of 2013, in O.S.No.74 of 2013, dated 25.11.2013.

2. The revision petitioner herein is the plaintiff, who filed the suit in

O.S.No.74 of 2013, for the relief of declaration and permanent injunction. During the pendency of the suit, the revision petitioner filed an Interlocutory Application, under Order VI Rule 17 C.P.C., in I.A.No.835 of 2013, for amendment of the plaint. In the affidavit filed in support of the Amendment Application, the revision petitioner has stated that, there are certain typographical errors while drafting the plaint, and, it was filed without correcting the same and hence, the present Application has been filed to effect corrections in the plaint. Opposing the said Application, the respondents/defendants filed a counter affidavit, stating that the averments made by the revision petitioner/plaintiff in the Application for amendment are false, and further, the petitioner has no right to file such Application.

3. The trial Court, considering the averments set out both in the affidavit and counter affidavit filed in support of amendment Application, dismissed the Application by holding that the revision petitioner has come forward to file the Application to amend all the entire material facts, pleaded orally in the plaint, viz., to extend the suit properties from 1.21.5 hectares to 0.40.5 hectares, to amend the year of issuance of patta from 1984 to 1974 and the date of taking possession is also sought to be amended from 1986 to 1975.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.

5. This Court is informed that the trial in the suit has not yet commenced and therefore, it is a pre-trial amendment. Order VI Rule 17 CPC enumerates that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner, and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties, provided that, no application in the amendment shall be allowed, after the trial has commenced, unless, the Court comes to the conclusion that in spite of due indulgence, the parties could not raise the matter before the commencement of trial.

6. Admittedly, in the case on hand, it is a pre-trial amendment sought for, and even now, the trial has not yet commenced. The Courts are to be liberal in allowing the pre-trial amendment, since it is a suit filed by the plaintiff by paying necessary court fee, and he cannot be deprived of his rights to amend the plaint at his choice, and of course, it is the plaintiff, who has to establish his case. Even in a case, where, certain new pleadings are set out in the Application for amendment, the court need not restrict the amendment application, since the trial has not yet commenced and the defendant in the suit will get an opportunity to defend the case. Idea behind this is that, pre trial amendment

will not cause any prejudice to the parties to the suit, rather, it would help for effective adjudication of the suit. Such being the position, the fate of the suit has to be determined only by the plaintiff, who filed the suit, and the Courts need not think about the developments, or addition made by the plaintiff by way of amendment, more specifically, before the commencement of trial.

7. In the light of above facts and circumstances of the case, the present Civil Revision Petition deserves consideration, and accordingly, the order passed by the learned District Munsif, Sathyamangalam, in I.A.No.835 of 2013, in O.S.No.74 of 2013, dated 25.11.2013 is set aside and the Civil Revision Petition is allowed. No order as to costs.

09.02.2017

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To

The District Munsif, Sathyamangalam.

S.M.Subramaniam, J.

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