

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.**JUSTICE S.M.SUBRAMAINAM**

C.R.P.(P.D.) No.310 of 2014 &
M.P.No.1 of 2014

Balu (Deceased)
Sekar (Deceased)

1.B.Gopi
2.S.Panchalai
3.K.Vidya
4.S.Thirunavukkarasu

.. Petitioners

Vs.

1.Velayutham
2.Karpagam
3.Sasikala
4.Parvathi
(R1 & R2 dismissed for default
vide order made in
M.P.No.1/2014 in CRP 310 of 2014
dated 21.08.2015)

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to allow the Revision Petition and to set aside the order passed in I.A.No.188 of 2013 in O.S.No.188 of 2002, on the file of the District Munsif, Arakkonam dated 24.09.2014.

For Petitioners : Mr.A.Kalavathy

For Respondents : Mr.A.S.Narasimhan -R3 & R4

ORDER

This Civil Revision Petition is filed to set aside the order passed in I.A.No.188 of 2013 in O.S.No.188 of 2002 on the file of the District Munsif, Arakkonam dated 24.09.2013.

2.The petitioners are the plaintiffs in O.S.No188 2002, and the Suit has been filed praying for permanent injunction.

3.The petitioners/plaintiff filed the Suit in the year 2002 and the learned counsel appearing for the petitioners contended that during the pendency of the Suit, the respondents/defendants altered the nature of the property by demolishing portion of the building in the year 2004 and subsequently in the year 2008, the respondents/ defendants have trespassed into the suit property and caused huge damage. Under those circumstances, they filed an Application, seeking amendment of Plaint under Order 6 Rule 17 of Code of Civil Procedure, in the year 2013.

4.The Application seeking for amendment of the Plaint was rejected by the trial Court on the ground that the same was filed after the commencement of trial and therefore, as per Order 6 Rule 17 of CPC, the same cannot be entertained. Further, the

amendment of Plaint sought for by the petitioners/plaintiffs amounts to altering the very nature of the Suit and travels beyond the pleadings set out in the Plaint as well as in the written statements. Such being the factual position, the trial Court dismissed the Application.

5.The learned counsel for the respondents opposed the Revision Petition by stating that the respondents purchased the property from the son and daughter of late Govindaraja Mudaliar and they were in possession of the suit scheduled property. Further, the respondents/defendants have put up construction in the suit scheduled property and even now in possession of the same. Therefore, the petitioners/plaintiffs have unnecessarily filed the Suit, knowing the fact that the respondents are in possession of the property. In other words, the learned counsel for the respondents contended that the suit for permanent injunction is not maintainable since the petitioners/plaintiffs are not in possession of the suit scheduled property.

6.Considering the rival contentions raised by the learned counsel for the petitioners and the respondents and on a perusal of the findings of the trial Court, it is clear that the Suit was filed in the year 2002 and even as per the contentions raised

by the petitioners/plaintiffs, the suit property was altered by damaging the same during the years 2004 and 2008. Such being the factual position, the petitioners ought to have diligently moved an Application, seeking amendment of Plaint, either in the year 2004 or during 2008. Instead, the petitioners moved the Application seeking amendment of the Plaint only in the year 2013 i.e. after a lapse of more than eight years.

7.The learned counsel for the petitioners stated that the damage was caused by the respondents on 29.2.2012 and thereafter, they moved the Application for amendment of the Plaint.

8.Such a contention cannot be accepted, in view of the fact that even according to the petitioners/plaintiffs, trespass alleged to have been committed by the respondents/defendants, commenced in the year 2004 itself and it continued upto 2012. Therefore, the petitioners/plaintiffs ought to have been diligent enough in filing proper Application, seeking amendment of Plaint, within a reasonable period, which was not done by the petitioners/plaintiffs, admittedly. That apart, the trial has already commenced and the evidence on the side of plaintiffs were also completed and now it is posted for cross examination of the

defendants. Such being the stage of the Suit, this Court is not inclined to consider the Application filed by the petitioners/plaintiffs, seeking amendment of Plaint and as rightly concluded by the trial Court that will alter the very nature of the Suit, since there was no pleadings regarding allegations, now freshly mooted out by the petitioners/plaintiffs.

9. Accordingly, Civil Revision Petition is devoid of merits and same is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

11.01.2017

Index : Yes
Internet : Yes
rpa

To

The learned District Munsif,
Arakkonam.

S.M.SUBRAMANIAM, J.,

rpa

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