

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.3340 of 2014

1. J.Gunavathi
2. J.Hemanthkumar
3. J.Padmavathi
4. J.Geetha

.. Petitioners

Vs.

M.Fazalur Rahman

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 19.03.2014 made in I.A.No.283 of 2014 in O.S.No.286 of 2012 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

For petitioners : Mr.K.Thangavelu

For Respondent : Mr.N.Damodaran

ORDER

The revision is filed by the defendants challenging the amendment allowed in favour of the plaintiff.

2. Originally, the suit was filed for recovery of possession and for damages. Subsequently, when the title was denied by the defendants, the plaintiff has filed an application to amend the plaint by including the relief of declaration of plaintiff's title to the suit property. The application seeking amendment was filed at the stage of commencement of trial. No doubt, post trial amendments should be viewed strictly by the Courts. But, in this case, after re-casting of the issues, the plaintiff has come up with the said amendment.

3. It is opposed by the defendants contending that it is only to fill up the lacunae, the amendment application has been filed. Unless the plaintiff establishes that inspite of due diligence, the amendment application could not be filed within time, the application itself is not maintainable. The written statement was filed on 07.09.2012 and the issues were framed on 24.11.2012. The plaintiff has also filed his proof affidavit on 06.02.2013. At this stage, issues were recasted. Thereafter, the amendment application has been filed.

4. It is pointed out by the learned counsel for the defendants that in the written statement, specifically it is mentioned that the suit is not maintainable for recovery of possession without seeking a prayer for declaration of title. But in the affidavit filed in support of the application, the plaintiff has stated that the defendants had not denied the title, which according to the learned counsel for the revision petitioners is false.

5. However, without the amendment being allowed for including the prayer for declaration of title, the suit may fail. A second suit also in this regard will be barred under Order 2 Rule 2 C.P.C. Therefore, the learned trial Judge, in the interest of justice, allowed the amendment application. The revision filed against the same cannot be allowed for the above said reasons. However, for the hardship put to the defendants and the delay caused by the plaintiff, which is the mistake of the plaintiff, the defendants should be compensated.

PUSHPA SATHYANARAYANA.J

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6. Accordingly, while confirming the order passed by the learned trial Judge, the respondent / plaintiff is directed to pay a sum of Rs.3,000/- (Rupees three thousand only) to the defendants as costs within a period of two weeks from the date of receipt of a copy of this Order.

7. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

10.01.2017

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To
The XVI Assistant Judge, City Civil Court,
Chennai.

C.R.P.(PD).No.3340 of 2014

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