

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM :

THE HONOURABLE MR.S.M.SUBRAMANIAM

C.R.P(PD).No.51 of 2014
and M.P.No.1 of 2014

1.Venthal
2.Unnamalai
3.Anjala

.. Petitioners

Vs.

M.Ganesan

.. Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 29.10.2013 passed in I.A.No.573 of 2013 in O.S.No.934 of 2011 on the file of the learned Additional District Munsif cum Judicial Magistrate, Chengam, Thiruvannamalai District.

For Petitioners : Mr.G.Rajan

For Respondent : Mr.D.Selvaraju

ORDER

This petition is filed by the petitioners challenging the fair and decreetal order dated 29.10.2013 passed in I.A.No.573 of 2013 in O.S.No.934 of 2011 on the file of the learned Additional District Munsif cum Judicial Magistrate, Chengam, Thiruvannamalai District.

2.The facts and circumstances in nutshell require to decide the present revision petition in hand is that the revision petitioners are the plaintiffs and they have filed suit for declaration and injunction in O.S. No. 934/2011. During the pendency of the suit, an Interlocutory Application in I.A. No.573 of 2013 under Order 6 Rule 17 was filed seeking amendment of pleadings. In the plaint, more specifically the revision petitioners state that there was an oral partition took place between the parties in the year 1993. But in the plaint, it was erroneously typed as 1985. The amendment sought for in the Interlocutory Application is to correct the order of oral partition from 1985 to 1993.

3.Learned counsel appearing for the petitioners argued that it was a typographical error committed at the time of filing of the plaint before the Trial Court and therefore, the petitioners have right to amend the plaint during the pendency of the suit. Further the Trial has not yet commenced and it is a pre- trial amendment and therefore, the amendment is liable to be admitted. But the Trial Court dismissed the same by stating the merits and demerits of the suit itself.

4.Learned counsel appearing for the respondent opposed the petition by stating that there was a registered partition deed dated 03.03.2009. When there is a specific clause in the registered partition deed filed by the plaintiffs, now they cannot go beyond the registered partition deed and introduced a new pleadings in the plaint and there is no question of allowing the application seeking amendment. Further the learned counsel for the respondent contented that it will alter the nature of the suit itself and further the plaintiffs originally relied upon only the registered partition deed dated 03.03.2009 and he has widening the scope of the suit by introducing the oral partition alleged to have took place in the year 1993.

5.The Trial Court considering the contentions, dismissed the petition on the ground that in the plaint, there is an averment regarding the oral partition took place in the year 1993. The pleadings regarding the oral partition was stated in the plaint based on the registered partition deed dated 03.03.2009. Therefore, there is no scope for typographical error and accordingly, the petition was dismissed. The Trial Court is of the opinion that if the petition is allowed, the new fact will arise in the suit and it will create

contradictions in the suit itself. Admittedly, it is a pre-trial amendment sought for by the plaintiffs. Order 6 Rule 17 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.

6. The Courts are normally liberal in allowing the pre-trial amendment, since the respective parties will get opportunity to submit their affidavits and counter affidavits at the time of proceeding with the trial. Further pre-trial amendment will not create any prejudice over the other party. The other party will get an opportunity to contradict the pleadings so amended before the commencement of the Trial. The Trial Court has gone under the merits and demerits of the suit and made a finding that if the petition is allowed, there is a possibility of creation of contradiction in the suit itself. If contradictory pleadings are made by the plaintiffs in the plaint, it is the duty of the plaintiffs to clarify the same at the time of the Trial and in other words, it is the look after of the plaintiffs to establish his case prima facie by adducing oral and

documentary evidence. The Trial Court need not go into the merits and demerits of the case, while deciding the amendment application, more specifically, before the commencement of Trial. Since the case on hand is a pre-trial amendment, this Court is inclined to consider the grounds of the revision petitioners and accordingly, the fair and decreetal order dated 29.10.2013 passed in I.A. No.573 of 2013 in O.S. No.934 of 2011 on the file of the learned Additional District Munsif cum Judicial Magistrate, Chengam, Thiruvannamalai District is set aside and this petition is allowed. Consequently, connected miscellaneous petition is closed. No order as to costs.

24.02.2017

Index: Yes/ No

vga

To

The Additional District Munsif cum
Judicial Magistrate, Chengam,
Thiruvannamalai District.

S.M.SUBRAMANIAM,J.

vga

C.R.P(PD).No.51 of 2014

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