

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.No.1499 of 2013
and
M.P.No.1 of 2013

V.R.Sivasubramaniyam

.. Petitioner

vs

1.Sundareshwarar
2.Mayur Karthikeyan
3.Nirmala Devi
4.The Tasildhar,
Erode Taluk & District.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decretal order in I.A.No.843 of 2012 in O.S.No.241 of 2002 dated 19.02.2013, on the file of the Principal District Munsif Court, Erode.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.T.Murugamanickam
(for R1 to R3)

No Appearance - (for R4)

ORDER

This Civil Revision Petition is directed against an order dated 07.02.2013 made in I.A.No.843 of 2012 in O.S.No.241 of 2002 on the file of the learned Principal District Munsif Court, Erode.

2.The petitioner herein is the 1st defendant in above suit filed by the respondents 1 to 3 as plaintiffs claiming for the relief of declaration and permanent injunction in respect of suit schedule property 'A' and 'B' respectively and also seeking for cancellation of an order passed by the Tahsildhar, Erode Taluk, the 2nd defendant in the suit.

3.In the said suit the respondents/plaintiffs took out an application in I.A.No.843 of 2012 seeking for amendment of their plaint by including the relief of mandatory injunction.

4.According to the revision petitioner the said application was posted along with some other I.A.'s from time to time and therefore he was under an impression that the said petition remain undecided and he was about to file counter.

5.Whereas the said application was found allowed on 29.09.2009 by setting the revision petitioner ex-parte by an ex-parte order dated 29.09.2009. Therefore he took up an application in I.A.No.35 of 2013 under Order IX Rule 7 of C.P.C. seeking the Trial Court to set aside ex-parte order passed against him on 29.09.2009 and to give him an opportunity to put forth their objection to the above application in I.A.No.843 of 2012 and to pass order on merits. However, the said application was dismissed by the learned Trial Judge. In the said circumstance, the revision petitioner challenges order dated 07.02.2013 made in I.A.No.843 of 2012 as baseless, arbitrary on misappraisal of the fact and law.

6.I heard Mr.V.Raghavachari, learned counsel for the revision petitioner and Mr.T.Murugamanickam, learned counsel for the respondents 1 to 3 and perused the entire materials available on record. No representation on behalf of the 4th respondent.

7.It is seen that prime contention of revision petitioner that the amendment application was allowed by the Trial Court without considering the objections made by him by way of filing I.A.No.35 of 2013.

8.He would further contend that plaintiffs /respondents had sought for amendment twice and his plaint was amended.

9.Per contra, the learned counsel for the respondents would submit that application of revision petitioner to hear his objection is belated one and liable to be dismissed on latches.

10.It is also his contention that the application was made belatedly and at such belated stage the revision petitioner

cannot claim for consideration of his objection, accordingly he pray for dismissal of this civil revision.

11.It is needless to say that pleadings are backbone of the suit proceedings. No doubt that the plaintiff or defendant can amend their pleadings and also may pray for additional relief. However, at the same time it is significant to note that such amendment should not cause change in nature of the suit or should not amount to withdrawal of any adverse admissions.

12.It is also to be noted that such amendment in so far as relief will be subject to the period of limitation as to the cause of action projected in the suit and the relief so claimed in the suit. Such amendment cannot be allowed to cause injustice to other side unless amendment being necessary for the purpose of determining the real questions in controversy between the parties.

13.At this juncture, it is needless to say that an amendment ought to have been allowed only after due consideration of all the above aspects. However, in the case on hand it is seen that the petitioner was found set ex-parte and the impugned order came to be made holding that the question of limitation can be decided at final hearing of suit and that revision petitioner can defend the same by way of filing an additional written statement.

14.In my considered opinion such approach of Trial Court is erroneous. In actual an amendment is liable to be allowed only on fulfilling the above conditions stated in the preceding paragraph that it should not change the nature of suit or not introduce a new case or not amounting to withdrawal of admission.

15.For the foregoing reasons, the Civil Revision petition succeeds and the same is hereby allowed. By taking into account of the age of the suit and as well the contention of the respondents, there shall be a direction to trial Court to expedite the trial as following:

(a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.843 of 2012 in O.S.No.241 of 2002 dated 19.02.2013, on the file of the learned Principal District Munsif, Erode;

(b) the learned trial Court is hereby directed to take up the suit on day to day basis, without giving

any adjournment to either parties and to dispose of the same within a period of two months from the date of receipt of a copy of this order, since the suit is of the year 2002. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vs

To

The Principal District Munsif Court,
Erode.

+1cc to Mr.V.Raghavachari, Advocate SR.No.49147

+1cc to Mr.Zeenath Begum, Advocate SR.No.49859

C.R.P.No.1499 of 2013 and
M.P.No.1 of 2013

GMV (13/12/2018)

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