

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM

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

C.R.P.(PD) No.3233 of 2013

and

M.P.No.1 of 2013

F.Ethiraj

.. Petitioner

vs

1.Sumathi
2.Kanagammal
3.Chokkalingam
4.Gnanasekaran
5.Subbu
6.Kuppammal
7.Ellammal
8.Santhi
9.Suseela

.. Respondents

Revision filed under Article 227 of Constitution of India

against the order dated 12.03.2013 passed in I.A.No.627 of 2012 in
O.S.No.177 of 1999 on the file of the District Munsif Court, Sholingur.

For Petitioner : Mr.J.Selvaraja

For Respondents : Mr.C.Sathish (for R1)
No Appearance (for R2 to R9)

ORDER

Challenging the order dated 12.03.2013 in I.A.No.627 of 2012 in O.S.No.177 of 1999, allowing the petition filed under Order 6, Rule 17 of C.P.C. on condition that the first respondent should pay a sum of Rs.500/- on or before 19.03.2013, the petitioner has filed this Civil Revision Petition. The petitioner is the 7th defendant and the first respondent is the plaintiff in the suit.

2. The first respondent/plaintiff filed the suit for partition and separate possession of suit properties. Pending suit, the first respondent filed I.A.No.627 of 2012 to amend the plaint alleging that the father of the plaintiff had colluded with the 7th defendant and attempted to create a false and vexatious document to the detriment of the plaintiff's right and share over the suit properties.

3. It is alleged that due to oversight and mistake a separate paragraph referring the cause of action for the suit was omitted to be stated in the plaint and same was pointed out by the counsel appearing for the 7th defendant during arguments. According to the first respondent, the cause of action for filing the suit was a bundle of facts and the non-typing of separate paragraph was only a mistake.

Hence, the plaint has to be amended.

4. Resisting the petition, the petitioner has filed counter stating that as per Amendment Act 22 of 2002 with effect from 01.07.2002, no application for amendment shall be allowed after the trial has commenced and the party could not have raised the matter before the commencement of trial. He prayed for dismissal of the petition.

5. Upon consideration of the rival submissions, the trial Court allowed the petition subject to payment of costs of Rs.500/- to the petitioner on or before 19.03.2013, failing which the petition shall stand dismissed. Aggrieved by the same, the petitioner has filed the Civil Revision Petition.

6. The learned counsel for the petitioner submitted that the trial Court failed to consider the right of the petitioner, who purchased the property from the first defendant, the father of the plaintiff. The trial Court had not properly applied its judicial mind and erred in allowing the petition. In fact, the first respondent stated fresh allegations of facts and fresh cause of action and as such the same

cannot be entertained.

7. Per contra, the learned counsel for the first respondent submitted that only by oversight a separate paragraph containing cause of action was omitted to be typed in the plaint and the proposed amendment would not alter the nature of the suit. He submitted that the trial Court by exercising its discretion has rightly allowed the petition and there is no need to interfere with the same.

8. It appears that evidence of both sides is over and arguments of both sides were also concluded and when the suit was posted for judgment on 18.12.2012, the first respondent had filed petition under Order 6, Rule 17 of C.P.C. to amend the plaint stating that a separate paragraph containing cause of action has been omitted to be typed in the plaint and the same was pointed out by the counsel appearing for the petitioner during the course of his arguments. The petitioner is apprehending dismissal of the suit on the ground of non-mentioning of cause of action paragraph.

9. On a perusal of the written statement of the petitioner filed before the trial Court, I find that the petitioner has not raised any

objection regarding non-mentioning of the cause of action paragraph in the plaint. Only during the course of arguments, the counsel has raised such a contention.

10. Admittedly, the non-mentioning of cause of action in a separate paragraph in the plaint is a mistake committed on the part of the first respondent's counsel. The bundle facts which constitute the cause of action were stated in the plaint averments. Because of the technical error committed by the counsel for the first respondent, the first respondent cannot be blamed.

11. Order 6, Rule 17 of Code of Civil Procedure, no doubt prohibits amendment after the evidence is over, but when the Court comes to the conclusion that in spite of due diligence party could not have raised the matter before commencement of the trial, the same can be allowed even after the trial is over. The provision of law for amendment is provided enabling the Court to determine the real controversy between the parties. Hence this Court is of the view that the trial Court, after considering the facts and circumstances of the case and in order to meet the ends of justice, rightly allowed the petition, however, subject to certain terms.

12. It is to be noted that the proposed amendment would not alter the nature and character of the suit. No prejudice would be caused to the petitioner, if the amendment was incorporated in the suit. For proper adjudication of the suit, the amendment incorporating a separate cause of action paragraph in the plaint would be necessary and the trial Court has rightly allowed the petition. By allowing the petition, the trial Court imposed condition to pay a sum of Rs.500/- to the petitioner by the first respondent, which, in my considered view, is reasonable, warranting no interference.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Considering the stage of the suit, the trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

30.01.2017

Note: Issue order copy on 13.07.2018

vs

Index : Yes

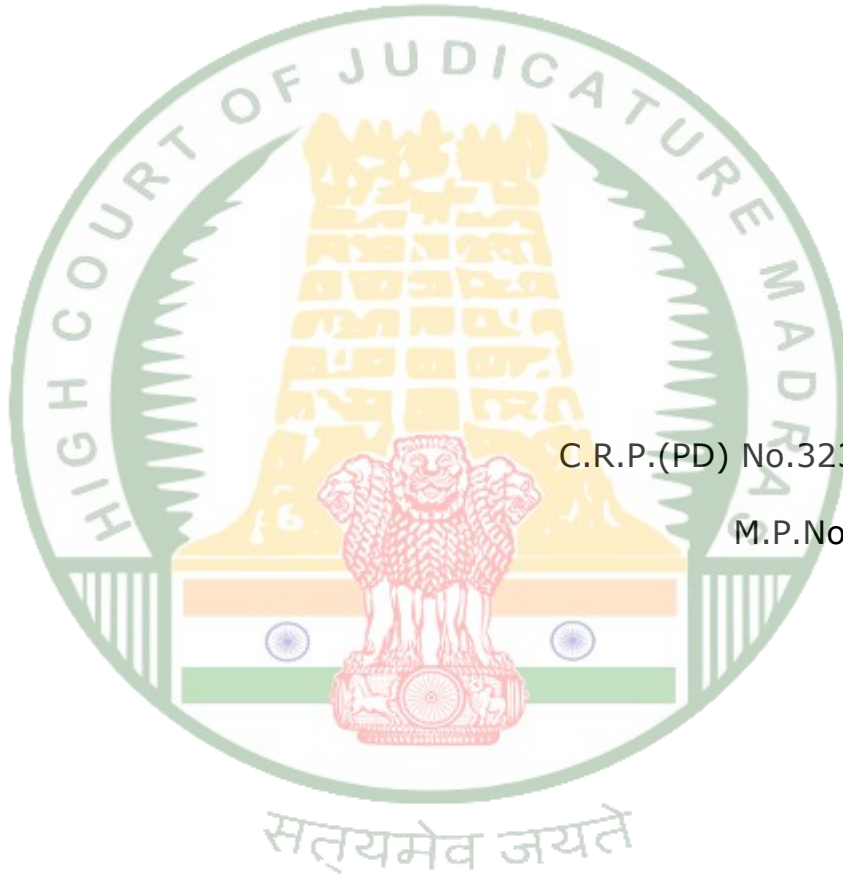
Internet : Yes

To

The District Munsif Court,
Sholingur.

M.V.MURALIDARAN, J.

VS



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