



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2601 of 2015
and M.P (MD) No.1 of 2015

Sigamony

... Petitioner/Petitioner/Appellant

Vs.

1. The Executive Officer,
Kollamcode Town Panchayat,
Kollamcode Post,
Kollamcode Village,
Vilavancode Taluk,
Kanyakumari District.
2. The Block Development Officer,
Munchirai Union,
Munchirai,
Vilavancode Taluk,
Kanyakumari District.

... Respondents/Respondents/Respondents

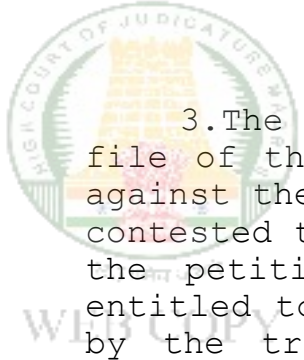
PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order and decreetal order passed in I.A.No.206 of 2014 in A.S.No.114 of 2011, dated 16.10.2015 on the file of the Sub Court, Kuzhithurai.

For Petitioner	: Mr.K.Sreekumaran Nair
For R - 1	: Mr.G.Muthu Kannan
For R - 2	: No appearance

ORDER

The petitioner has filed the above Civil Revision Petition against the order and decreetal order, dated 16.10.2015 passed in I.A.No.206 of 2014 in A.S.No.114 of 2011 on the file of the Sub Court, Kuzhithurai.

2.The petitioner is the appellant in A.S.No.114 of 2011 on the file of the Sub Court, Kuzhithurai and the plaintiff in O.S.No.289 of 2008 on the file of the Principal District Munsif, Kuzhithurai and the respondents are the defendants in the suit.



3.The petitioner filed the suit in O.S.No.289 of 2008 on the file of the Principal District Munsif, Kuzhithurai, for injunction against the respondents. The respondents filed written statement and contested the suit. After trial, the suit was dismissed holding that the petitioner did not seek for declaration and therefore not entitled to injunction. Against the said Judgment and Decree passed by the trial Court, the petitioner has preferred an appeal in A.S.No.11 of 2011 on the file of the Principal District Munsif, Kuzhithurai. In the said appeal, the petitioner filed the application in I.A.No.206 of 2014 to amend the plaint to include the prayer of declaration in the suit. The petitioner has stated that from the report of the Advocate Commissioner, the property over which the respondents are claiming interest is situate inside the compound wall of the petitioner. In the circumstances, the petitioner sought for amendment to show the property over which the respondents claim interest as 'B' schedule property and declaration in respect of the said property. The respondents did not file any counter in the application.

4.The learned Sub Judge, Kuzhithurai dismissed the application in I.A.No.206 of 2014 holding that any proposed amendment must be helpful to decide the issue in the suit must be sought for before commencement of the trial, if amendment is sought for after commencement of the trial, parties must give reason, for which he did not sought for amendment earlier. The learned Judge also held that the petitioner has not given any reason as to why he did not seek amendment earlier and amendment is now sought for is only to rectify the defects pointed out by the trial Judge in the Judgment rendered in O.S.No.289 of 2008.

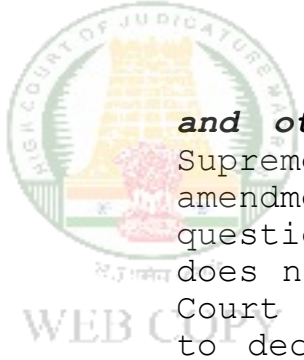
5.The learned counsel appearing for the petitioner submitted that the learned Appellate Judge erred in dismissing the application on the ground that the petitioner has not given sufficient reason for the delay in filing the petition for amendment. The suit was dismissed on the ground that the petitioner did not pray for declaration and did not pray for appointment of an Advocate Commissioner to identify the property claimed by Grama Seva Sangam. The learned Appellate Judge failed to see that the Advocate Commissioner was already appointed and the property claimed by the respondents is within the compound wall of the petitioner.

6.The learned counsel appearing for the petitioner has relied on the following Judgments:-

(i) In **Williams Vs. Lourdusamy and another** reported in **2008 (2) TLNJ 172 (Civil)**, the Honourable Supreme Court has held that the suit is for injunction and suit for declaration of title are based on different cause of action and earlier suit for injunction will not be a bar for later suit for declaration of title.

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) In **Rajesh Kumar Aggarwal and others Vs. K.K.Modi**



and others reported in **(2006) 4 SCC 385**, the Honourable Supreme Court has held that Court should allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. The Court has to decide whether such an amendment is necessary to decide the real dispute between the parties to shorten the litigation and interest of justice.

(iii) In **S. Shanmugam and others Vs. Chandrasekaran** reported in **2016 (2) CTC 131**, this Court has held that the amendment can be ordered even in the Second Appeal. This Court remanded the suit to the trial Court and also permitted the plaintiff to amend the suit to include the prayer for declaration of title also.

The learned counsel relied on the above said Judgments and prayed for allowing the Civil Revision Petition.

7. The learned counsel appearing for the first respondent submitted that the petitioner has not given any reason for not praying for decree of declaration of title. Having sought for relief of injunction only and having lost the suit, the petitioner is trying to rectify the defects pointed out by the trial Court for dismissing the suit. The learned first Appellate Court has given valid reason for dismissing the application and there is no reason warranting interference by this Court.

8. In **Revajeetu Builders and developers Vs. Narayanaswamy and sons and others** reported in **(2009) 10 SCC 84**, the learned counsel for the first respondent relied on the Judgment of the Supreme Court in paragraph No.58 in support of his contention and the same reads as follows:-

"58. The first condition which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the Courts' discretion in grant or refusal of the amendment."

9. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the materials available on record.

10. The petitioner has filed the suit for injunction alone. The suit was dismissed on the ground that the petitioner ought to have prayed for declaration of title also. The petitioner filed the first appeal in A.S.No.114 of 2011 on the file of the Sub Court, Kuzhithurai. In the first Appeal, he filed an application in I.A.No.206 of 2014 for amendment of the plaint to include the prayer



of declaration. The learned Appellate Judge dismissed the application on the ground that the petitioner has not given any reason for not including the prayer for declaration at the time of filing of the suit itself and that the petitioner filed an application for amendment only to rectify the defect pointed out by the learned trial Judge dismissing the suit filed by him for injunction. The learned Appellate Judge has not considered whether the amendment sought for by the petitioner is necessary for deciding the issue in the suit. The petitioner has stated that his father has gifted 5 cents to the respondents and therefore, he did not pray for declaration of title and also due to the fact that the respondents are interfering with his property, he has filed the suit only for injunction. The learned Appellate Judge also failed to consider the fact that cause of action for the relief of injunction and declaration of title are entirely different and amendment can be ordered even at the stage of Second Appeal as held by this Court in the Judgment in **S. Shanmugam and others Vs. Chandrasekaran** reported in **2016 (2) CTC 131**. The learned Appellate Judge has not properly exercised his power conferred on him and committed irregularity in dismissing the application filed by the petitioner for amendment.

11. In the result, this Civil Revision Petition is allowed and the order of the learned Sub Judge, Kuzhithurai in I.A.No.206 of 2014 is set aside and I.A.No.206 of 2014 is allowed. The petitioner is permitted to amend the plaint to include the prayer for declaration. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (C)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Kuzhithurai.

+ 1 CC TO Mr.K.SREEKUMARAN, ADVOCATE IN SR No. 3984

PS

TE/MR-VB : 07/02/2017 : 4P/3C

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