



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.12.2017
(Reserved on 03.11.2017)

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.1899 of 2017
and
C.M.P (MD) No.9826 of 2017

R.Bakthavathsalam

... Petitioner

vs.

1. Shibukumar
2. Sreerekha

... Respondents

Civil Revision Petition filed against the fair and decreetal order dated 28.07.2017 passed in I.A.No.220 of 2017 in O.S.No.202 of 2014 on the file of the I Additional District Munsif, Kuzhithurai.

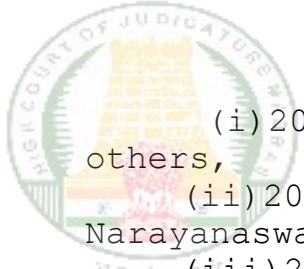
For Petitioner : Mr.M.P.Senthil
For Respondents : Mr.C.Godwin

O R D E R

The Civil Revision Petition has been filed against the fair and decreetal order dated 28.07.2017 in I.A.No.220 of 2017 in O.S.No.202 of 2014 on the file of the I Additional District Munsif, Kuzhithurai.

2.The petitioner is the plaintiff in O.S.No.202 of 2014 and the respondents are the defendants. The suit has been filed for permanent injunction restraining the defendants from trespassing into the plaint schedule property and from altering the physical features of the plaint schedule property. Pending the suit, the plaintiff has filed an application in I.A.No.220 of 2017 under Order VI Rule 17 of C.P.C., to amend the plaint, which was dismissed by the Court below, against which, the present revision petition has been filed.

3.The learned counsel for the petitioner would submit that the relief sought for by way of amendment to include the prayer of declaration is very much necessary and proper for an effective adjudication and therefore, the Trial Court ought to have allowed the application. He would further submit that the amendment application is well within the legal principles for amendment and the delay in filing the same can be condoned by awarding cost in the interest of justice and the delay should not be a ground for rejecting the application for amendment and to support his contention, he has relied on the following judgments:-

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- (i) 2013 (1) L.W.213 (Abdul Rehman & Another v. Mohd. Ruldu & others,
(ii) 2010(1) MWN (Civil) 460 (Revajeetu Builders & Developers v. Narayanaswamy & Sons)
(iii) 2015 (1) CTC 820 (Chitra v. Kannan)
(iv) 2009(2) LW 546 (Anathula Sudhakar v. P.Buchi Reddy (Dead) By LRs & Ors.
(v) 2007 (5) CTC 595 (Church of South India Trust Association v. Kovil Pillai and others
(vi) 2016(2) MWN (Civil) 346 (Kannayiram vs. Thalaivar, Thoppampatti, Ooratchi Mandram
(vii) (2000) 1 SCC 712 (B.K.Narayana Pillai v. Parameswaran Pillai and another).

4. Learned counsel for the respondents through the counter affidavit filed in I.A.No.220 of 2017, submitted that if the application for amendment is allowed, the cause of action and the character of the suit will change and the petition itself is filed only to drag on the proceedings and to harass the respondents. In support of his contentions, learned counsel for the respondents relied on the following judgments:-

4.1. In 2010(1) MWN (Civil) 41 (M.Palanisamy v. Valmoorthy) , the Hon'ble Supreme Court has held as follows:

"10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

4.2. In (2009) 2 SCC 409 (Vidyabai and others v. Padmalatha and another), the Apex Court has held as follows:-

"Order 6 Rule 17 is couched in a mandatory form. Unless the jurisdictional fact, as envisaged in the proviso to Order 6 Rule 17 CPC is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial."

5. Heard the learned counsels for the petitioner as well as the respondents.

6. Perusal of the records would show that the written statement was filed on 01.12.2014 and the suit was posted for judgments on 05.04.2017. At this stage, the petitioner has filed applications for reopening and recalling PW1 which were allowed and when the case



was posted for cross examination of PW1, the present application for amendment has been filed.

7. At the risk of repetition, the Amendment Act is reproduced below:-

'By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:-

'Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.'''

8. The petitioner has not stated any acceptable reason for this Court to come to a conclusion that in spite of due diligence, how amendment petition could not be filed in time. Therefore, the judgment relied on by the petitioner does not have application to the facts and circumstances of the case as the amendment has been filed at the stage of the judgment and the same in my considered opinion, has been filed to protract the proceedings and therefore, the order of the learned Judge does not require any interference by this Court.

Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(A.S)

/True Copy/

Sub Assistant Registrar

To

The I Additional District Munsif,
Kuzhithurai.

+1cc to Mr.C.GODWIN Advocate in SR. No. 91173

+1cc to Mr.M.P.SENTHIL Advocate in SR. No. 91362

BALA/AKV

JS/JC/SAR.4/18.12.2017/3P-4C

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