



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2017

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD) No.2533 of 2017
and C.M.P.(MD)No.11848 of 2017

Pushpalatha

... Petitioner/Petitioner/Plaintiff

-Vs-

1.Moni
2.Harikumar
3.The President
Manjalumoodu Village,
Manjalumoodu Post,
Vilavancode Taluk,
Kanyakumari District.

... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the order and decreetal order passed in I.A.No.177 of 2016 in O.S.No.279 of 2013 on the file of II Additional District Munsif Court, Kuzhithurai dated 14.11.2017.

For Petitioner : Mr.C.Godwin

O R D E R

This Civil Revision Petition has been filed to set aside the order and decreetal order passed in I.A.No.177 of 2016 in O.S.No.279 of 2013 on the file of II Additional District Munsif Court, Kuzhithurai dated 14.11.2017.

2.The revision petitioner is the plaintiff in the suit. He challenges the dismissal of his application filed under Order VI Rule 17 C.P.C. The suit is one for bare injunction. The suit was filed on 30.07.2013 and the suit was posted in December 2013. According to the revision petitioner, encroachment was committed over a portion of the suit property on 15.12.2013. The revision petitioner filed his proof affidavit on 06.04.2016. Thereafter, the matter was posted for cross-examination as many as 5 hearings. Thereafter, the plaintiff filed an Interlocutory Application in I.A.No.177 of 2016 for amendment. The said Interlocutory Application was filed in the year 2016. The plaintiff wanted to convert the suit one for demarcation and damages. The learned trial Judge dismissed the said application on the ground that that the said application has been filed belatedly, after commencement of the trial. Even according to the plaintiff, encroachment took place on 15.12.2013. Even though the court was obliged to take note of subsequent



developments, there was an inordinate delay of more than 2 ½ years in filing the application for amendment. Therefore, the trial Judge was right in giving a finding that there was no diligence on the part of the plaintiff. The learned trial Judge considered the Proviso to Order VI Rule 17 C.P.C and dismissed the application.

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3. The learned counsel for the petitioner would place reliance on the judgment of this Court reported in 2007(5) MLJ 1294 (S.Chellathurai Vs. Chidambaram Chettiar). In that case, this Court allowed the amendment application even though the plaintiff had filed proof affidavit.

4. I am of the view that the facts are clearly distinguishable. In the present case, the plaintiff had not shown any diligence in making the application. What is put against the revision petitioner is not filing of proof affidavit, but the condoning delay in filing the amendment application. Therefore, the order passed in I.A.No.177 of 2016 in O.S.No.279 of 2013 by the learned II Additional District Munsif, Kuzhithurai is confirmed. This Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P.(MD) No.11848 of 2017 is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To,

The II Additional District Munsif, Kuzhithurai.

Copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1CC to Mr.C.Godwin, Advocate, SR.No. 94089

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21.12.2017

CM

AM/JC/SAR 1/05.02.2018/2P/5C