



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2017
(Reserved on 05.06.2017)

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (PD) (MD) No.524 of 2017
and
CMP (MD) No.2441 of 2017

Azhagar

... Petitioner/petitioner/
Plaintiff

vs.

Srinivasa Naickar

... Respondent/Respondent/
Defendant

Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 10.01.2017 made in I.A.No.359 of 2016 in O.S.No.98 of 2015 on the file of the District Munsif, Periyakulam.

For Petitioner : Mr.K.Guhan
For Respondent : Mr.B.Rajesh Saravanan

ORDER

The revision petitioner is the plaintiff in the suit filed for permanent injunction alleging that the respondent herein who is the adjacent land owner is trying to encroach upon his vacant portion of the land situated on the southern portion of the defendant's land. The suit is contested by the respondent herein/defendant on various grounds.

2.In the written statement, it is specifically averred that the suit for bare injunction cannot sustain without a declaratory relief.

3.One of the issues framed for trial is, whether the suit is maintainable without seeking declaration of title.

4.The Trial Court on completion of examination of witnesses and hearing the arguments had reserved the suit for judgment. At that juncture, the plaintiff/revision petitioner has filed I.A.No.359/16 to amend the plaint to include the relief of declaration.

5.The Trial Court has dismissed the said application on the ground that the petition to amend is filed after completion of trial



just before pronouncing the judgment, hence it is liable to be dismissed.

6. Aggrieved by the dismissal of the application, the present revision petition is filed on the ground that no new case is introduced by way of amendment. The amendment if allowed will avoid multiplicity of proceedings and no prejudice will cause to the respondent/defendant.

7. In support of the above said submission, the learned counsel for the revision petitioner relied upon the judgment of the Supreme Court in **Sampath Kumar vs. Ayyakannu and another** reported in **2002 (4) CTC 189**, wherein, the Apex Court has held as under:-

'9. Order 6, Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that mere delay cannot be ground for refusing a prayer for amendment.'

8. In the case cited above, though the amendment petition was filed after 11 years, it was filed before commencement of trial. Whereas, in the present case, the petition to amendment is filed after trial when the case was reserved for judgment.

9. Order VI Rule 17 of the Civil Procedure Code reads as under:-

'17. Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.'

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.''

10.The defendant in the written statement had categorically stated that the suit as framed is not maintainable since no declaratory relief is sought. The Court has also framed the issue touching upon that point. The proviso to Order VI Rule 17 CPC restricts entertaining petitions of this nature filed after commencement of trial.

11.It is not the case of the revision petitioner that in spite of due diligence, he could not seek the relief of declaration at the first instance while filing the suit and the subsequent event had necessitated him to seek amendment after completion of the trial. Further, by amendment, a new set of facts is likely to be introduced. In such circumstances, if the proposed amendment now sought is allowed after examination of the witnesses adverting to the issue relating to the omission to seek appropriate relief, the defendant will be prejudiced unjustly.

12.In the above said facts and circumstances, this Court finds no error in the order impugned. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Periyakulam.

+ 1 CC TO Mr.B.RAJESH SARAVANAN, ADVOCATE IN SR No. 59267
+ 1 CC TO Mr.K.GUHAN, ADVOCATE IN SR No. 58936

NBI
TE/KKR/SAR-IV : 20/06/2017 : 3P/4C

Pre-Delivery order made in
CRP (PD) (MD)No.524 of 2017 and
CMP (MD)No.2441 of 2017
07.06.2017