



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.01.2017**

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2636 of 2016 (PD)
and
C.M.P(MD)No.12388 of 2016

Thangappa

.. Petitioner/Petitioner/Plaintiff

Vs.

Rajendran (died)

1.R.Vadivelu

2.P.Thirusangu

3.P.Maruthamuthu

4.P.Ilangovan

5.R.Jeyam

6.R.Pandian

(Respondents 5 & 6 are legal

Representatives of deceased

1st defendant in suit)

.. Respondents/Respondents/Defendants
2 to 7

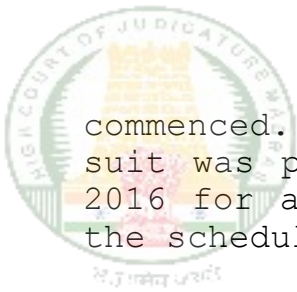
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the fair order and decreetal order made in I.A.No.1016 of 2016 in O.S.No.399 of 2004, dated 4.11.2016 on the file of the District Munsif Court, Pudukottai.

For Petitioner : Mr.N.Balakrishnan

ORDER

This petition has been filed by the petitioner against the fair order and decreetal order made in I.A.No.1016 of 2016 in O.S.No.399 of 2004, dated 4.11.2016 passed by the District Munsif Court, Pudukottai.

2.The petitioner is the plaintiff. The respondents are the defendants. The petitioner filed suit in O.S.No.399 of 2004 before the District Munsif Court, Pudukottai against the respondents for permanent injunction. Subsequently, he filed petition for amendment of the prayer for declaration and permanent injunction and alternatively for recovery of possession. Again, he filed an application for amendment of the plaint for declaration and recovery of possession. The respondents filed written statement and trial



commenced. After conclusion of evidence let in by parties, when the suit was posted for arguments, the petitioner filed I.A.No.1016 of 2016 for amendment of the description of the property mentioned in the schedule of plaint and amendment of prayer.

3.According to the petitioner, the amendment is necessary for proving his case and the petitioner came to know the necessity of amendment only when his counsel was prepared for arguments. The amendment sought for is not introduced new cause of action or altering the nature of the suit. No prejudice will be caused to the respondent.

4.The respondents filed counter and submitted that the suit is of the year 2004 and earlier the petitioner filed three applications at different period for amendment of the prayer and the same were allowed inspite of the objection raised by the respondents. The reason given by the petitioner for amendment in the present application, is not valid. The suit is posted for arguments. At that stage, the petitioner has come out with the present petition only to drag the proceedings and prayed for dismissal of the I.A.

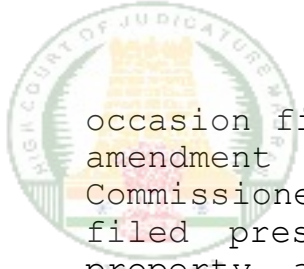
5.The learned Judge considering the averments made in the affidavit, counter affidavit and materials on records, dismissed the I.A.No.1016 of 2016 holding that earlier amendment filed by the petitioner in I.A.No.233 of 2005 was ordered on condition that amendment will be subject to the Law of Limitation and the said application was filed after Advocate Commissioner filed his report and the petitioner has filed the present application after 11 years from the date of report of the Advocate Commissioner.

6.Against the said order of dismissal, the petitioner has filed the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner submitted that the learned Judge ought to have considered the petition for amendment liberally and the learned Judge failed to see that amendment is to avoid the multiplicity of proceedings. The petitioner is a illiterate person and his previous counsel has not properly advised him and drafted the plaint. The delay in filing the application is not a reason for dismissing the application. In any event, the learned Judge ought to have allowed the application for amendment on payment of costs. In support of his contention, the learned counsel for the petitioner relied on the judgment **(Parthiban vs. Shakul Hameed) reported in 2016(2) TLNJ 417 (Civil)**.

8.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

9.From the materials on record, it is seen that the suit is of the year 2004 and trial commenced in the year 2011. The suit is posted for arguments. At that stage, the petitioner has come out with the present petition for amendment. The petitioner on earlier



occasion filed petition in the year 2005 in I.A.No.233 of 2005 for amendment of the description of the property after Advocate Commissioner filed his report and the same was allowed. Again, he filed present application for amendment of description of the property and prayer of the suit stating that it is for the clarification of the description of the property based on the report of the Advocate Commissioner. The learned Judge took note of the facts, dismissed the application by giving cogent and valid reason and there is no illegality or irregularity warranting interference by this Court. The Judgement relied on by the learned counsel for the petitioner is not applicable to the facts of the present case.

10.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS II)

/True copy/

Sub Assistant Registrar

To

The District Munsif
Pudukottai.

Copy to : The Section Office,
VR Section, Madurai Bench of Madras High court Madurai.

+1 cc to Mr.N.Balakrishnan,Advocate,SR.NO.448/12

am

AAM-GSV-SV:3P/4C/20.01.2017

C.R.P (MD) No.2636 of 2016 (PD)
04.01.2017