

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD).No.1447 of 2018 and

C.M.P.No.7700 of 2018

Kasilingam @ Elumalai

.... Petitioner

Vs.

1. A.Vimaladevi
2. Meganathan
3. Umasankar

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order made in I.A.No.629 of 2017 in O.S.No.1710 of 2011 dated 21.02.2018 on the file of the II Additional District Munsif, Puducherry.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mrs.A.Sumathy
for caveator

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ORDER

The relief sought for in this revision is to set aside the fair and decreetal order made in I.A.No.629 of 2017 in O.S.No.1710 of 2011 dated 21.02.2018 on

the file of the II Additional District Munsif, Puducherry.

2. The first respondent is the plaintiff who filed a suit against the revision petitioner in O.S.No.1710 of 2011 seeking for a permanent injunction in which the petitioner filed the written statement, after framing issues and completion of trial. When the matter was posted for arguments, at that stage the respondent/plaintiff filed an Interlocutory application under Order VI Rule 17 r/w Section 151 of CPC in I.A.No.629 of 2018 in O.S.No.1710 of 2011 for amending the prayer in the suit stating that there is a typographical error.

3. After filing the counter and after hearing both sides, the trial Court allowed the Interlocutory application.

4. Aggrieved against the said order passed by the trial Court, the revision petitioner/respondent is before this Court by way of this revision petition.

5. Heard learned counsel for the petitioner and perused the material available on record.

6. The learned counsel for the petitioner would submit that for the post trial amendment is not permitted unless the Court comes to the conclusion

that inspite of due deligence, the party could not have raised the matter before the commencement of trial. The learned trial Judge without considering this aspect, perused the records and simply allowed the application without assigning any valid reason. Therefore, the order passed by the Court below is liable to be set aside.

7. In this case, after filing written statement, despite they have pointed out in the written statement. Now the plaintiff cannot say that it is a typographical error.

8. On a perusal of entire evidence shows, neither the revision petitioner nor the respondent has raised this issue either during the chief examination of the PW1 or put suggestions before the defendant side witness at the time of cross examination. Therefore the reading of the proviso to Rule 17 of Order VII of C.P.C, the contention raised by the respondent is not at all acceptable one.

9. Admittedly, no other suit is pending between the parties, therefore the amendment will not give much impact on the parties. If it is typographical error, the facts can be clarified from the witness during the examination for which no amendment is necessary.

P.VELMURUGAN, J.,

vum

10. In the result, the order passed by the trial court in I.A.No.629 of 2017 in O.S.No.1710 of 2011, dated 21.02.2018 on the file of the II Additional District Munsif, Puducherry is hereby set aside and the revision petition is allowed. Consequently, the connected Miscellaneous petition is closed. No costs.

23.04.2018

Index:Yes/No

Speaking order / Non speaking order

vum

To

1. The II Additional District Munsif,
Puducherry

C.R.P.(PD).No.1447 of 2018
& C.M.P.No.7700 of 2018