

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.06.2018

CORAM

THE HON'BLE MR. JUSTICE **P.VELMURUGAN**

CRP.(PD).No. 1617 of 2018 and
CMP.No. 8778 of 2018

S. Subramaniam (Died)
1. S.Saraswathi
2. Madeswaran
3. Sakthivel
4. Dhanalakshmi ... Petitioners

Vs.

M. Murugesan (Died)
1. M.Jayabalan
2. M.Kumaresan
3. M.Karthikeyan
4. M.Sentilnathan
5. Santhayal @ Santhi
Kalyani (Died)
6. M.Mahalakshmi
7. Saradha
8. M.Deepa
9. P.T.Saravanan
10.T.Ravikumar
11.T.Selvamani
12.Sampath ... Respondents

Prayer : Civil Revision Petition filed Under Article 227 of the Constitution of India to set aside the fair and decretal order dated 19.03.2018 made in I.A.No.63 of 2018 in O.S.No.192 of 2008 on the file of the learned First Additional District Munsif, Bhavani.

For Petitioners : Mr.R.Renukadevi

For Respondents : Mr.A.K.Kumarasamy, Senior Counsel
for Mr.S.Kaithamalai Kumaran

ORDER

The Civil Revision Petition has been filed against the Order dated 19.03.2018 made in I.A.No.63 of 2018 in O.S.No.192 of 2008 on the file of the learned First Additional District Munsif, Bhavani.

2. The revision petitioners are the defendants in the suit. The respondents filed a suit in O.S.No.192 of 2018 on the file of the learned I Additional District Munsif, Bhavani. After completion of pleadings, framing of issues and after examination of witnesses on the side of the plaintiffs, the respondents/plaintiffs filed an application to amend the plaint. After hearing the rival submissions made on either side, the trial Court allowed the application filed by the respondents/plaintiffs with a cost of Rs.3,000/- paid to the revision petitioners. Feeling aggrieved against the said order for amendment, the revision petitioners have approached this Court by way of revision petition.

3. The learned counsel appearing for the revision petitioners would submit that in the affidavit the respondents/plaintiffs have clearly stated that from the R.D.O. report, there is no details about the extent of the property. Moreover, the suit was filed in the year 2008 and the R.D.O. has passed the order during the year 2009 itself, but the respondents/plaintiffs have filed the application, belatedly, during the year 2018. As per proviso to Order 6 Rule 17, due diligence, this application would not be filed earlier and the fact came to know now only. But the respondents not stated anything about the knowledge of the fact in the affidavit and no reason has been given. The trial Court has failed to note that fact and simply allowed the application and the amendment will change the character of the suit. He has placed reliance on the decision of the Hon'ble Apex Court reported in **"(2012) 2 SCC 300" J.Samuel and others Vs. Gattu Mahesh and others"** and referred to the paragraph No. 19, which is read as follows :-

"19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient.

The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial."

relying upon the above said decision, the learned counsel for the revision petitioners would submit that the order passed by the trial Court is liable to be set aside and prays for allowing this revision petition.

4. Per contra, the learned counsel appearing for the respondents would submit that the amendment would not change in character of the suit and only the extent of the suit property has been mentioned mistakenly, the respondents filed an applications to that effect. He would further submit that the respondents put a question before the witnesses, at that time only they came to know about the extent of the land was mentioned wrongly. Therefore, there is no reason to interfere with the order passed by the trial Court.

5. Heard the rival submissions made on either side and perused available the records and the order passed by the trial Court.

6. On a perusal of records, it is seen that the respondents have filed a suit against the revision petitioners and at the time of recording evidence, they filed an application to amend the plaint. Admittedly, this application has been filed belatedly and no reasons had been given. The respondents came to know the fact only at the time of recording evidence but all the materials are available even prior to commencement of the trial. There is no reason put forth by the revision petitioners that the nature and character of the suit will be changed and prejudice would be caused to the revision petitioners, if the application to amend the plaint is allowed.

7. The proviso to Order 6 Rule 17 CPC says that at the time of dealing with the application for amendment of plaint, the Court has to see due diligence, the party did not note the mistake in the pleadings and could not bring into the Court in earlier occasion before commencement of the trial, if it is so, then the Court can exercise its discretionary power judiciously and allow the application. In this case, this Court does not find any arbitrariness in exercising the discretionary power. Hence, there is no illegality or infirmity in the order passed by the learned trial Court and finds no reason to interfere with the order passed by the trial Court.

P.VELMURUGAN, J.,

rts

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

06.06.2018

Index :Yes/No

Internet :Yes

Speaking order/Non-speaking order
rts

To

1. The Presiding Officer,
First Additional District Munsif Court,
Bhavani



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