

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1024 of 2015
& M.P.No.1 of 2015

V.Elumalai .. Petitioner

Vs.

M.Francis .. Respondent

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 14.10.2014 made in I.A.No.814 of 2013 in O.S.No.244 of 2007 on the file of the District Munsif Court, Polur.

For Petitioner : Mr.S.Baskaran

For Respondent : Mr.Ashokpathy
for M/s.Pass Associates

ORDER

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This Civil Revision Petition has been filed to set aside the fair and decretal order dated 14.10.2014 made in I.A.No.814 of 2013 in O.S.No.244 of 2007 on the file of the District Munsif Court, Polur.

2.The petitioner is plaintiff and respondent is the defendant in O.S.No.244 of 2007 on the file of the District Munsif Court, Polur. The petitioner filed the said suit for mandatory injunction against the respondent for a direction to remove the permanent super structure of terraced building of Kitchen room installed by the respondent over the "B" Schedule property and for permanent injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the "C" Schedule property by way of obstruction or by constructing compound wall in the "C" Schedule property. The respondent filed written statement on 25.09.2007.

3.The petitioner, along with the suit filed I.A.No.563 of 2007 for appointment of an Advocate Commissioner. The said application was allowed. The Advocate Commissioner inspected the suit property and measured the same with the help of Surveyor and filed his report with sketch on 13.10.2007.

4.When the suit was posted for trial, the petitioner filed application, I.A.No.814 of 2013 for amendment of the plaint to

include the measurement given in the plaint as per the measurement given by the Advocate Commissioner in his report with regard to encroachment and to include the relief of declaration of title of the petitioner in respect of "A" Schedule property and for consequential injunction against the respondent, restraining him from interfering with his peaceful possession and enjoyment of the "A" Schedule property and also for amendment of consequential relief.

5. According to the petitioner, he has given measurements in the plaint. The Advocate Commissioner appointed has filed the report with exact measurements of encroachment. In view of the exact measurements given in the report, it is necessary to amend the plaint by substituting the measurements given by the Advocate Commissioner. The "A" Schedule property is an agricultural land measuring 44 cents. In a portion of the "A" Schedule property, he has constructed a terraced house in the extreme end of southern portion of "A" Schedule facing Devigapuram to Arani Road side. The petitioner has sought for amendment of plaint to include the relief of declaration of his title in respect of "A" Schedule property in order to

seek the relief of mandatory injunction to remove the encroachment of respondent.

6.The respondent filed counter affidavit and contended that Advocate Commissioner filed report on 13.10.2007 and petitioner has come out with the present application after 7 years of filing of the report. If his intention is bonafide, he ought to have filed application immediately after filing of the report by the Advocate Commissioner, whereas the petitioner has come out with the present application only to drag on the proceedings.

7.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the application on the ground that the present application is filed after 6 years of date of filing of the report of the Advocate Commissioner at the time of trial.

8.Against the said order of dismissal dated 14.10.2014 made in I.A.No.814 of 2013 in O.S.No.244 of 2007, the present Civil Revision Petition is filed by the petitioner.

9.The learned counsel for the petitioner reiterated the averments in the affidavit and contentions raised in the grounds of revision. The learned counsel for the petitioner further contended that amendment can be ordered at any stage of the suit and Court has power to allow the party to amend the pleadings which may be necessary for determining the issues in the suit. Even after commencement of trial, Court has power to order amendment, if the party satisfies the Court that inspite of due diligence, he could not have filed application for amendment earlier. In the present case, the amendment sought for is only pre trial amendment.

10.In support of his contentions, the learned counsel for the petitioner relied on the following judgments reported in:

(i)(2012) 2 SCC 300 (J.Samuel and others)

(ii)2015(1) CTC 820 (Chitra Vs. Kannan)

11.The learned counsel for the respondent contended that the petitioner has filed application for amendment belatedly i.e., 7 years after Advocate Commissioner has filed his report. The petitioner has

not given any valid reason and he was not diligent enough to seek amendment at the earliest.

12. In support of his contentions, the learned counsel for the respondent also relied on the same judgment relied on by the learned counsel for the petitioner, reported in **(2012) 2 SCC 300 (J. Samuel and others)**.

13. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record and judgment relied on by counsel for parties.

14. The amendment sought for by the petitioner is pre trial amount. When an amendment is sought for before commencement of trial, Court must consider the same liberally. If amendment sought for is just and necessary for determining the real dispute between the parties, the Court can order amendment at any stage of the suit. The delay in filing application is not a ground for rejecting the said application. The petitioner can seek for declaration at any stage of the suit when the relief sought for earlier is for an injunction. It is

well settled that the amendment to include the relief of declaration can be allowed even at the appellate stage. The learned Judge has committed an irregularity in dismissing the application on the ground of delay without considering the reasons given by petitioner for amendment.

15. In the result, the impugned order of the learned Judge dated 14.10.2014 made in I.A.No.814 of 2013 in O.S.No.244 of 2007 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.02.2018

Index: Yes/No

Internet: Yes/No

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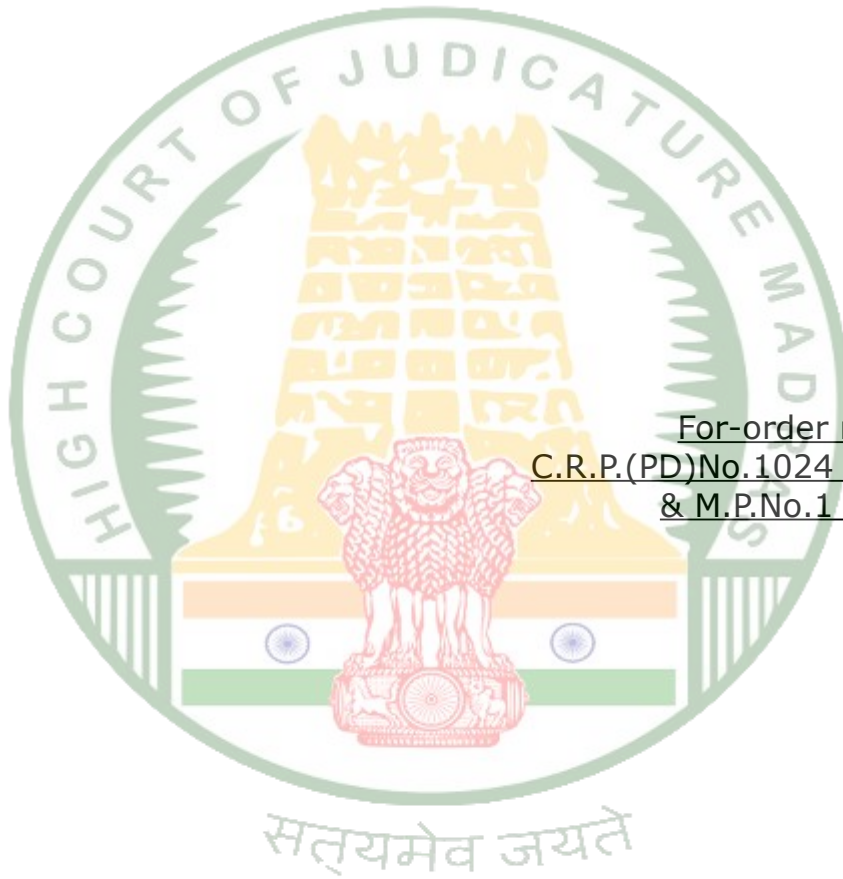
To

The District Munsif,
Polur.

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V.M.VELUMANI, J.

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For-order made in
C.R.P.(PD)No.1024 of 2015
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