

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 23.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) No.4002 of 2016

and

CMP No.20234 of 2016

Govindarajan

... Petitioner

Versus

1. P.M. Jinna Bai

2. Samima Bivi

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.09.2016 passed in O.S. No.185 of 2009 on the file of the District Munsif, Madurantagam.

For petitioner : Mr.K.Govi Ganesan

For respondents : Mr. D. Ravichander

ORDER

The petitioner/plaintiff has filed the suit in O.S. No.185 of 2009 on the file of District Munsif Court, Madurantagam for permanent injunction. The said suit was posted for trial and the examination of PW1 was completed. At that stage, the petitioner, has filed the application in I.A. No.1491 of 2016 under Order VI Rule 17 and Section 151 Civil Procedure Code to amend the plaint. The court below dismissed the said application for amendment on the ground that the petitioner has raised a new fact, new cause of action and introduced new relief than the one prayed for in the suit. Further, the amendment sought by the petitioner lacks bonafide and the Interim Application has been filed to drag on the proceedings,

Challenging the same, the present Civil Revision Petition has been filed.

2. The learned counsel for the petitioner/plaintiff would submit that the petitioner has filed the suit for permanent injunction. The said suit was posted for examination of PW1 and before completion of trial, the application seeking amendment has been filed and therefore it cannot be said that the application was filed belatedly. Further, the amendment of prayer, if entertained, would not cause prejudice to the respondents and therefore, the court below ought to have allowed the application. The respondents have constructed new bath room and toilets on the western side portion of the suit schedule property by tress passing into the suit property and are in unlawful occupation of a portion of the suit property. The application for amendment has become necessary inasmuch in the suit.

3. The learned counsel appearing for the respondent/defendants submitted that by virtue of amendment, the plaintiff is seeking to introduce a new case than originally in the plaint. If the proposed amendment sought for by the respondent/defendants is permitted, it would defeat the very defence projected by the respondents in the written statement because at the time of filing the written statement, the respondents have no knowledge about the proposed plea made by the petitioner/plaintiff and they have no occasion to meet those averments. Further the cause of action for seeking the present relief cannot be sought by way of an amendment of the plaint and the proposed amendment if entertained would result in a fresh case being projected by the petitioner/plaintiff. Further more the application seeking amendment had been filed by the plaintiff after commencement of trial. Even, the petitioner/plaintiff has admitted that examination of PW1 was completed and he has to be cross examined by the respondent-defendant. Therefore, the trial Court taking note of the above has rightly dismissed

the application for amendment. In support of this contention learned counsel for the respondents/defendants relied on the decision reported in ***Rajesh Kumar Agarwal and others versus K.K. Modi and others*** reported in **2006 4SCC 385** and ***Mount Mary Enterprises -Vs. Jivratna Medi treat Private Limited*** reported in **2015 4 SCC 182**

4. Heard the learned counsel for both sides and perused the material on record. Admittedly, the petitioner/plaintiff has filed the suit praying for the relief of permanent injunction to restrain the respondents/defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. In the suit, trial commenced and one witness on the side of the plaintiff/petitioner was examined as PW1 is likely to be cross examined by the respondent. At this stage, it is alleged by the plaintiff that on 10.09.2016, the respondents/defendants have unlawfully trespassed into the suit property and put up construction of toilet and bathrooms. In such circumstances, the petitioner/plaintiff has filed the application seeking to amend the relief, which he originally sought for namely bare injunction into one for declaration declaring that he is the owner of the suit property and for recovery of possession of the suit property, which the respondents/defendants have occupied during the pendency of the suit and also to direct the defendants to pay a sum of Rs.500/- per month as damages for unlawful use and occupation of the suit property, till the date of delivery of the possession of the property, which was forcibly occupied by the respondents/defendants. It is to be noted that at the time when the plaintiff has filed the suit, he only alleged that the defendants/respondents attempted to trespass into the suit property and to interfere with his peaceful possession and enjoyment of the suit property. During the pendency of the suit,

since the respondents/defendants have put up a construction in a portion of the suit property, the plaintiff was constrained to file the present application seeking amendment. No doubt, the amendment sought for by the plaintiff has virtually changed the nature and character of the pleadings as well as the relief sought in the suit at the first instance. However, it has to be observed that such amendment is necessary in view of the subsequent alleged trespass of the portion of the suit property by the defendants. Therefore, instead of driving the plaintiff to file a fresh suit seeking for a relief of declaration, it would be only appropriate to permit him to amend the pleadings in the suit. This is more so that the plaintiff could not seek the said relief at the time when he filed the suit. Moreover by reason of subsequent attempt of the respondents, the suit which was originally filed by the plaintiff itself becomes infructuous and it could not be adjudicated upon. The decision of the Hon'ble Supreme Court reported in **Rajesh Kumar Agarwal and others versus K.K. Modi and others (2006 4SCC 385)**, wherein it was held as under :-

"the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the

larger interest of doing full and complete justice to the parties before the Court."

and in Mount Mary Enterprises -Vs. Jivratna Medi treat Private Limited (2015 4 SCC 182), wherein after referring to the earlier decision, it has held as under :

"North Eastern Railway Administration, Gorakhpur V. Bhagwan Das (D) by LR's. (2008) 8 SCC 511 " 16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at an stage of the proceedings. In Pirgonda Hongonda Patil V. Kalgonda Shidgonda Patil and others (1957) 9 SCR 595 which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions :

(a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs", the Supreme Court reiterated the following position of law.

5. The trial Court failed to take note of the fact that when once an amendment is permitted, it is always open to the respondents to file their additional written statement or counter affidavit to meet out those averments. In the present case, by virtue of permitting the plaintiff to amend the plaint, the respondents can always be permitted to defend those averments relating to the amendment of the plaint by filing additional written statement. Thereafter, the trial Court can go into the validity and correctness of the pleadings made by the respective parties.

Instead of doing so, the trial Court ought not to have rejected the application of the plaintiff for amendment of the pleadings in the plaint. Therefore, this Court is of the view that the proposed amendments sought for by the plaintiff are absolutely necessary and if those amendments are not permitted, it would cause prejudice to the plaintiff. In the light of the above facts and decision cited supra, the order passed by the Trial Court is set aside. Taking note of the fact that the suit was of the year 2009, the trial Court is directed to dispose of the suit filed by the plaintiff as expeditiously as possible, preferably on or before 30.08.2018. Both the parties are directed to extend their co-operation for disposal of the suit within a time limit prescribed by the Court.

6. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is also closed.

23.02.2018

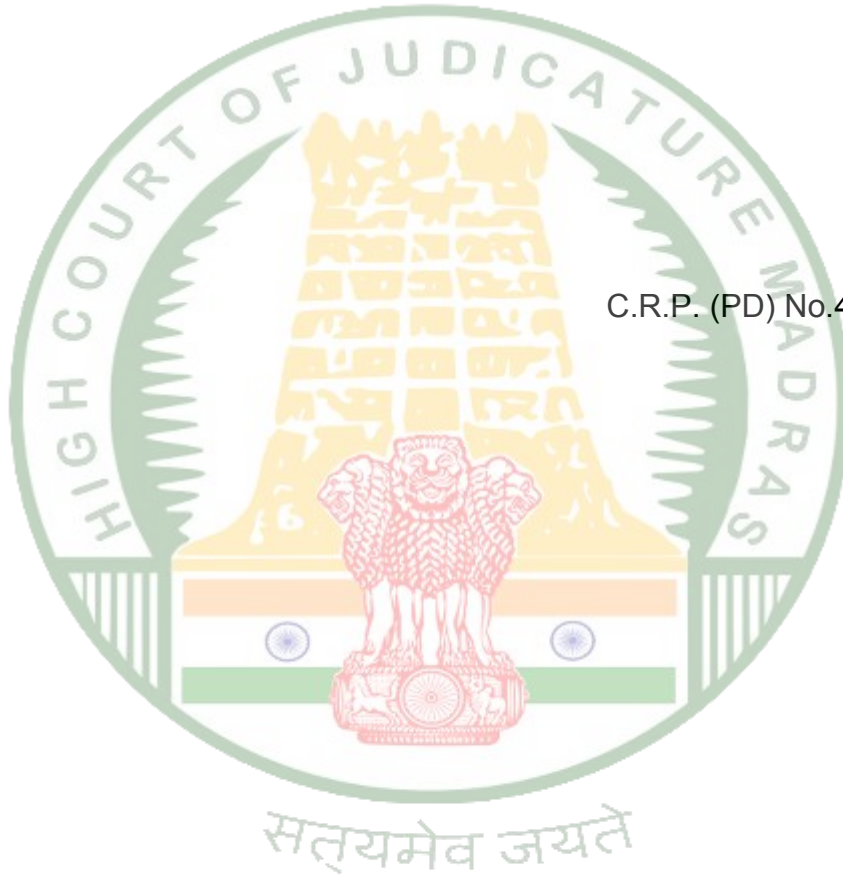
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To
The District Munsif, Madurantagam.

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D.KRISHNAKUMAR, J.

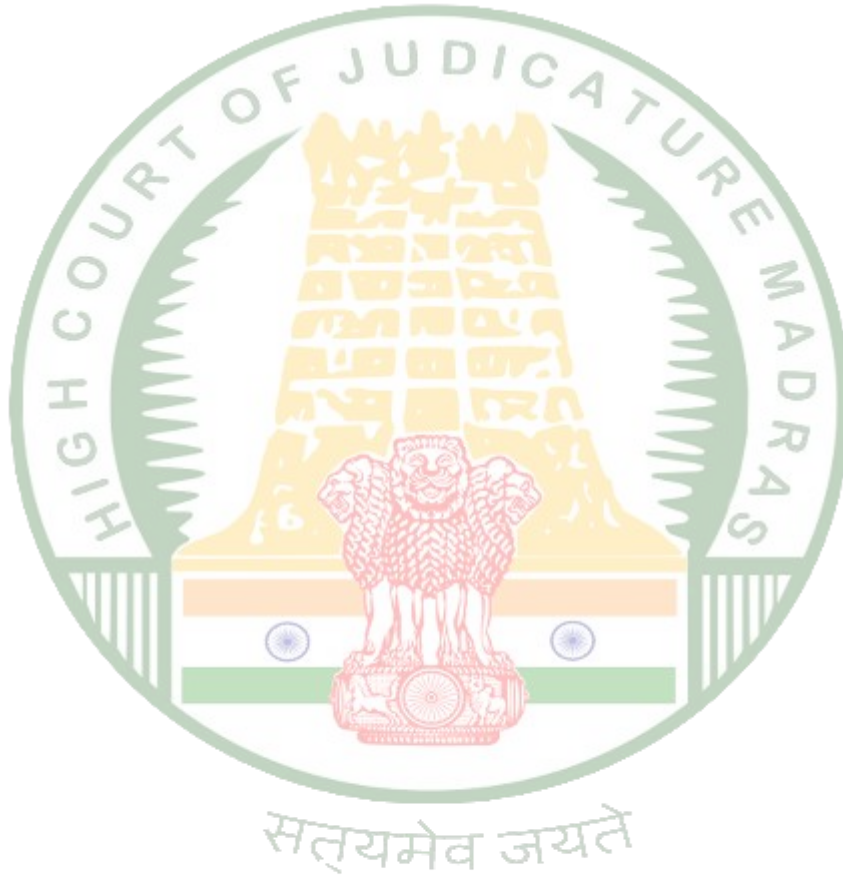
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