

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P (PD).No.593 of 2004

and

C.M.P.No.5920 of 2004

Rajeswari

...Petitioner /Plaintiff

Vs

1.Ramasamy

2.Thambi Gounder

3.Maragatham

...Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.2136 of 2003 in O.S.No.517 of 1998 by the Principal District Munsif Court, Coimbatore, dated 13.01.2004.

For Petitioner : Mr.K.F.Manavalan

For Respondents : Mr.B.Nedunchezhiyan for R1 & R2

Not ready in notice for R3

ORDER

The Civil Revision Petition arises against the dismissal of an application filed for amending the plaint in I.A.No.2136 of 2003 in O.S.No.517 of 1998 filed before the learned Principal District Munsif Court, Coimbatore. The suit was originally filed by the petitioner seeking permanent injunction restraining the respondents from obstructing the petitioner and her men for putting up construction in the suit property by means of a permanent injunction and from interfering with the petitioner possession and enjoyment of the suit property. The petitioner had also taken steps to appoint an Advocate Commissioner. The respondent had filed a written statement in which apart from denying the claim of the petitioner, they had put forth a defence that they have never obstructed the petitioner from constructing in her property.

2. When the matter was posted on the specific date for trial, the plaintiff has come forward with the impugned application to amend the plaint. The petitioner had contended that respondent had put up a construction after the filing of the suit and before the Commissioner's visit. The defendants had countered this petition stating that the construction of the tiled shed took place even before the filing of the suit in the year 1990 and that the petition was highly belated. He had

contended that the petitioner is not entitled to any relief and that the application was barred by limitation.

3. The learned District Munsif, Coimbatore, dismissed the said application holding that the application was highly belated and made after the suit was posted in the list for trial.

4. Mr.K.F.Manavalan, learned counsel appearing on behalf of the petitioner would contend that the application for amendment had come to be filed only as the construction had taken place after the filing of the suit. Therefore, at the time of filing of the suit the relief claimed was only for a permanent injunction. He further contended that the amendment of plaint could be allowed at any stage provided it does not change the basic structure of the suit and further amendment should be liberally allowed at any stage of the proceedings.

5. In support of his contentions, the learned counsel has produced the following judgments:

(i) 2001 2 SCC 472 (Ragu Thilak D. John Vs. S.Rayappan and others)

(ii) 2003 2 L.W. 21 (Sampath Kumar Vs. Ayyakannu and another)

6. Per contra, Mr. B.Nedunchezhiyan, learned counsel appeared for the respondents contended that the application is highly belated and made with an intend to protract the proceedings. He also contend the suit itself is 20 years old and the entire construction has been completed. Therefore, nothing survives in the suit.

7. Heard both sides. The petitioner had come forward with a suit on the averments that the respondents are obstructing the petitioner's attempts to put up construction and there by interfering in her possession of property. The petitioner has also contended that the respondent was forcing the petitioner to leave four feet space in her property. In the affidavit filed in support of the amendment application, the petitioner has contended that prior to the visit of commissioner the respondent had put up construction in the petitioner's property and since the construction was within her property its amounts to an encroachment and therefore the respondents were bound to remove the said encroachment. It is seen that the Commissioner has visited the property as early as on 18.04.1998 and the petitioner was aware of the construction even in the year 1998. There is no explanation as to why she has awaited till 2003 to come forward with the present application. However, considering the dictum of the Hon'ble Supreme Court a liberal approach has to be made with regard to the amendments provided they do not

alter the nature of the suit.

8. I am therefore inclined to interfere with the order of the learned Principal District Munsif, Coimbatore. However, taking into account the fact that the petitioner has not given any explanation for her delay in filing the application for amendment it is made clear that the amendment which is new being allowed will relate back only to the date of filing of the Interlocutory Application I.A.No.2136 of 2003 i.e December 2003 and not from the date of the suit as held in the Judgment reported in 2003 2 L.W. 21 (Sampath Kumar Vs. Ayyakannu and another) with this observation, the order of the learned Principal District Munsif, Coimbatore in I.A.No.2136 of 2003 is set aside to the extent that the amendment will relate back only to the date of the filing of the Interlocutory Application in I.A.No.2136 of 2003 in O.S.No. 517 of 1998.

9. With the above observations, the Civil Revision Petition stands allowed. Considering the fact that the suit is of the year 1998, the learned Principal District Munsif, Coimbatore is directed to complete the proceedings of the suit within a period of three months from the date of receipt of a copy of this order and report to this Court. Consequently connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

To
The Principal District Munsif Court,
Coimbatore.

+1cc to Mr.S.Gunalan, Advocate SR.No.43893

NM(CO)
SMI/30.08.2018

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