



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2018

Delivered on : 21.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (MD) (PD) No.2182 of 2015

and

M.P. (MD) No.1 of 2015

G.Raghavan

.. Petitioner/Petitioner/Plaintiff
Vs.

Executive Officer,
Town Panchayat,
Nilakottai,
Dindigul District.

.. Respondent/Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.89 of 2015 in O.S.No.63 of 2014, dated 04.07.2015 on the file of the District Munsif Court, Nilakottai.

For Petitioner

: Mr.D.Selvaraj

For Respondent

: Mr.G.Muthukannan

ORDER

Challenging the fair and decreetal order made in I.A.No.89 of 2015 in O.S.No.63 of 2014 dated 04.07.2015 on the file of the learned District Munsif Court, Nilakkottai, the petitioner/plaintiff has filed the above Civil Revision Petition.

2.The petitioner has filed the suit in O.S.No.63 of 2014 on the file of the learned District Munsif Court, Nilakkottai for permanent injunction. Pending suit the petitioner herein took out an application in I.A.No.89 of 2015 under Order 6, Rule 17 of Civil Procedure Code to amend the plaint by including the relief of declaration and mandatory injunction to demolish the construction made in suit 2nd item of property.

3.It is averred in the affidavit filed in support of the amendment application by the petitioner that at his instance Advocate Commissioner was appointed and in his report it is noted of the defendant had hurriedly put up basement in the suit 2nd item of property. Even after the report of the Advocate Commissioner, the defendant is proceeding with the construction unmindful of the pendency of the suit. Hence the petitioner has filed the above application seeking for amendment of the plaint.



4.The plaintiff/defendant filed his counter denying the averments made in the amendment application. It is the contention of the respondent that the government has sanctioned fund to construct latrine for the welfare of the public and the Director of Town Panchayat has given permission for the construction of public toilet. As per the permission work order was given to the contractor and he completed the construction of public toilet. In fact in between the Plaintiff's house and the public toilet one Subramaniam had put up his house by encroaching upon the Natham promboke. Therefore the petitioner's contention cannot be accepted that because of the construction of public toilet, he lost his pathway right. If the proposed amendment is allowed it will change the character of the suit, hence he prayed to dismiss the application.

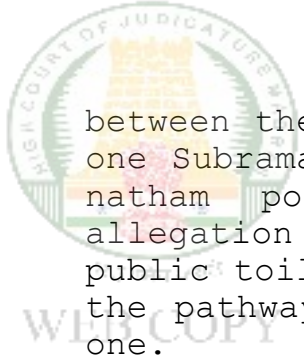
5.The Trial Court upon considering the rival submissions made on either side, dismissed the amendment petition by order dated 04.07.2015. As against the same the present Civil Revision Petition is filed.

6.The Learned counsel appearing for the Petitioner submitted that the lower Court could have allowed the amendment application and permitted the Petitioner to amend the prayer in the Plaint. The Learned Counsel further submitted that, by amending the prayer, no prejudice would be caused to the Respondent. The proposed amendment would avoid multiplicity of proceedings.

7.Per contra, the learned counsel for the Respondent argued that if the proposed amendment to include the relief of declaration and mandatory injunction is allowed, it will change the entire character of the suit and the nature of relief and in such circumstances the respondent herein would be affected seriously. In fact at the time of filing the suit itself construction of public toilet was going on. Therefore, he contended that the present amendment petition is not maintainable either in law or on facts and hence he prays to dismiss the Civil Revision Petition.

8.I heard Mr.D.Selvaraj, learned counsel for the petitioner and Mr.G.Muthukannan, learned counsel for the respondent and perused the entire materials available on record.

9.In the case on hand, the Petitioner has filed the application seeking to amend the plaint to include the relief of declaration and mandatory injunction. According to the Petitioner the construction of public toilet has seriously affected his right to use the passage available in the suit 2nd item of property. On the other hand, it is the contention of the respondent that in



between the house of the Plaintiff/Petitioner and the public toilet one Subramaniam has constructed his tiled house by encroaching into natham poromboke land comprised in S.No.133. Therefore the allegation of the Plaintiff that because of the construction of public toilet, after the house of Subramaniam, is affected in using the pathway cannot be accepted and the same is also not justified one.

10.It is settled proposition of law that for determining the question in controversy, amendment can be ordered at stage of the suit. In this case, the trial court has considered the question of prejudice caused to the opposite party and dismissed the amendment petition and the said exercise of the trial court is not warranting interference by this Court.

11.At this juncture, it is to be noted that the averment made by the respondent herein in his counter at para 6 that in between the house of plaintiff and the public toilet constructed by the defendant, one Subramaniam has encroached the natham poromboke land and constructed tiled house. With regard to the above said averment, there is no explanation or denial by the Revision petitioner and he has not chosen to file any reply to the counter affidavit of the respondent herein. Therefore, this Court could safely come to the conclusion that the averment made in para 6 of the counter affidavit of the respondent herein is correct. Hence, the order rejecting the amendment petition by the Court below does not require any interference.

12.In view of the discussion made above, I am in full agreement with the finding of the Trial Court that, if the proposed amendment is allowed it will change the character of the suit.

13.In the above circumstances, I do not find any merits in this Civil Revision Petition and the same is liable to be dismissed, accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To
The District Munsif, Nilakottai.

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