



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 18.04.2018
DELIVERED ON : 23.08.2018
CORAM

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

C.R.P. (MD) (PD) No.2213 of 2015

Lingappan

... Petitioner/Respondent/Defendant

vs

Subba Naicker @ Subbaiha

.. Respondent/Petitioner/Plaintiff

Civil Revision Petitions filed under Article 227 of Constitution of India against the order dated 14.7.2015 passed in I.A.No.839 of 2014 in O.S.No.542 of 2012 on the file of the Additional District Munsif Court, Tuticorin.

For Petitioner : Mr.B.Rajesh Saravanan

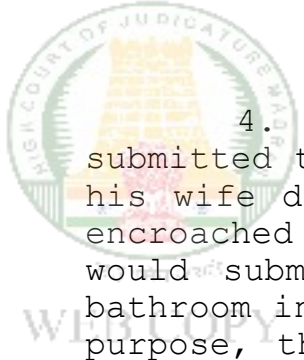
For Respondent : Mr.R.J.Karthick

ORDER

The petitioner has filed this Civil Revision Petition as against the order dated 14.7.2015 in I.A.No.839 of 2014 in O.S.No.542 of 2012 passed by the Additional District Munsif, Tuticorin in allowing the petition filed under Order 6, Rule 17 of C.P.C. by the respondent praying to amend the plaint.

2. The trial Court, while allowing I.A.No.839 of 2014, has accepted the plea of the respondent and has allowed the application.

3. The learned counsel for the petitioner contends that the trial Court has failed to properly appreciate the circumstances and passed the impugned order and it has failed to consider that the respondent was improving his case by way of amendment. He further submitted that the trial Court wrongly considered that at the time of inspection of an Advocate Commissioner, there was no bathroom in the suit property and also the trial Court wrongly held that after inspection of Advocate Commissioner, the bathroom was constructed by the petitioner. He would submit that the trial Court has failed to consider that the petitioner had constructed the bathroom even before the filing of the suit and therefore, prayed for allowing the



4. Per contra, the learned counsel for the respondent submitted that taking advantage of the absence of the respondent and his wife during last week of April, 2014, the petitioner illegally encroached upon the suit property and constructed a bathroom. He would submit that the petitioner has no right to construct the bathroom in the suit property and same has to be removed. For that purpose, the prayer in the plaint has to be suitably amended. The learned counsel further submitted that the trial Court was right in allowing the amendment petition, which warrants no interference and prayed for dismissal of the Revision. In support of his contention, the learned counsel relied upon the decision in Pankaja and another v. Yellappa (D) Lrs. & others, reported in 2004 (4) CTC 231.

5. The point that arises for consideration is whether the trial Court was right in allowing I.A.No.839 of 2014.

6. The respondent has filed the suit for declaration, permanent injunction and for mandatory injunction for removal of the steps and the staircases described in the plaint schedule.

7. Pending suit, pursuant to the order passed in I.A.No.2373 of 2012, an Advocate Commissioner was appointed and the Advocate Commissioner inspected the suit property and filed his report.

8. According to the respondent, in paragraph 11 of the report, the Advocate Commissioner stated that when he was inspected the suit property on 24.3.2014, the petitioner dumped bricks on the southern side of plaint schedule item No.1 for construction of a bathroom below the staircase. When the Advocate Commissioner asked the petitioner to remove the bricks so as to enable him to measure the property, the petitioner removed the bricks. According to the petitioner, pending suit the petitioner had constructed the bathroom and the same has to be removed, for which the plaint prayer has to be amended suitably.

9. While allowing I.A.No.839 of 2014, the trial Court observed that the petitioner had constructed the bathroom pending suit i.e., after 24.3.2014. Since the respondent has filed the suit for mandatory injunction for demolition of steps and staircases, if the petition for amendment is dismissed, the respondent has to file a separate suit for removal of the bathroom and in order to avoid multiplicity of proceedings, the petitioner has filed the amendment petition and the same can be entertained.

10. In Pankaja and another v. Yellappa (D) Lrs. & others, supra, the Hon'ble Supreme Court held as under:

"12. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not to allow an



amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

11. As rightly argued by the learned counsel for the respondent, pending suit, the petitioner had put up construction and also in order to avoid further litigation, the trial Court has exercised its discretion for allowing the petition for amendment.

12. It is settled that the dominant purpose of allowing the amendment is to minimize the litigation. Therefore, if the facts of the case so permits, it is always open to the Court to allow application in spite of delay and laches in moving such amendment application.

13. In the case on hand, the suit is one for declaration and for mandatory injunction for removal of steps and staircases respectively in the plaint schedule property. In its order, the trial Court held that pending suit, the petitioner had put up bathroom in the suit schedule item No.4. The petitioner, though, denied the title of the respondent in his written statement, which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment, the respondent will be introducing a different relief. Considering the facts and circumstances of the case and also bearing in mind the discretion, the trial Court allowed the amendment petition and the same warrants no interference.

14. The Civil Revision Petition is dismissed. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Additional District Munsif Court, Tuticorin.

+1CC to Mr.R.J.Karthick, Advocate, SR.No.80192

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