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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

**C.R.P. (MD) (PD) Nos.675 and 676 of 2014**  
**and**  
**M.P. (MD) No.1 of 2014**

Narayanan ... Petitioner in both CRPs.,  
vs.  
1.Alagarsamy  
2.Jamunarani ... Respondents in both CRPs.,

**Common Prayer:-**Civil Revision Petitions filed under Article 227 of the Constitution of India, against the order and decreetal order in I.A.Nos.603 and 604 of 2013 in O.S.No.179 of 2007 on the file of the District Munsif Court, Nilakottai dated 21.02.2014.

For Petitioner  
in both CRPs., : Mr.R.Rajaraman

For Respondents  
in both CRPs., : Mr.P.Santhana Krishnan

**COMMON ORDER**

These civil revision petitions have been filed as against the order, dismissing the Interlocutory Applications filed by the petitioner to amend the plaint in O.S.No.179 of 2007 on the file of the District Munsif Court, Nilakottai.

2.The brief facts that are necessary for the disposal of these civil revision petitions are as follows:

(i) The petitioner is the plaintiff in the suit in O.S.No.179 of 2007 on the file of the District Munsif Court, Nilakottai. The petitioner filed a suit for declaration of his title and for consequential injunction restraining the defendants from interfering with the plaintiff's right to carry out some repairing works in the exclusive wall of the plaintiff's house, which lies on the western side of the plaintiff house. The suit is also for recovery of a sum of Rs.2,000/- towards compensation for the damages caused to the plaintiff on account of the illegal acts alleged against the defendants.



3.The suit properties have been described as Item Nos.1 and 2.

4.It is the case of the plaintiff in the suit that the suit property absolutely belongs to the plaintiff by virtue of a registered partition deed dated 22.01.1957, wherein, the suit property was allowed to the plaintiff. Stating that the plaintiff is in possession and enjoyment of the suit property, the suit was laid. The suit was filed in the year 2007. During the pendency of the suit, the defendants filed Interlocutory Application in I.A.No.603 of 2013 to amend the plaint in O.S.No.179 of 2007 to include a prayer for mandatory injunction to remove the encroachments committed by the defendants and to hand over the right in possession to the plaintiff in the suit. Similar application was filed in I.A.No.604 of 2013 to make corresponding amendment in the petition filed by the petitioner in I.A.No.366 of 2007 seeking injunction.

5.The above two Interlocutory Applications were dismissed by the trial Court. It is to be stated that in the affidavit filed in support of the petition for amendment, the petitioner has stated that the amendment is necessitated because of the subsequent events after the filing of the suit. It is also stated that the encroachment has also been noted by the Advocate Commissioner.

6.The trial Court dismissed the applications mainly on the ground that the amendment on the basis of the Advocate Commissioner's report is not maintainable. The lower Court is of the view that the report of the Advocate Commissioner cannot be taken as a whole and that permitting the plaintiff to amend the plaint in accordance with the Commissioner's report is not appropriate.

7.The lower Court after referring to some precedents of this Court found that the parties should prove their case by letting in legally acceptable evidence and that the report of the Advocate Commissioner, is only for the Court to evaluate at the appropriate time.

8.This Court heard the submissions made by the learned counsel for the petitioner and the learned counsel for the respondents.

9.It is not in dispute in this case that the case of the plaintiff is that the defendants unlawfully encroached into the plaintiff's property. It is the further case of the plaintiff that the defendants have encroached further, after suit. This report of an Advocate Commissioner is certainly in favour of revision petitioner regarding encroachment. It is true that the application for appointment of an Advocate Commissioner is to enable the parties to obtain evidence and not to collect evidence.



This principle does not stand in the way of plaintiff seeking amendment of plaint based on any subsequent event or for an amendment on the basis of such report. Merely because, the plaintiff has sought for amendment in tune with the findings of the Advocate Commissioner regarding encroachment, the application cannot be dismissed as plaintiff should be given an opportunity to prove his case and seek relief of mandatory injunction. Even the question of limitation can be decided at the time of trial.

10. In this case, the trial Court is aware of the fact that the plaintiff has alleged encroachment against the defendants. The question whether such allegations are true or not has to be seen at the time of trial on the basis of evidence on either side. However, want of proof at the stage of amendment cannot be a reason to reject the petition for amendment. In that view of the matter, this Court is unable to accept the view taken by the lower Court in dismissing the petition for amendment.

11. As a result, these civil revision petitions are allowed and the order passed in I.A.Nos.603 of 2013 in O.S.No.179 of 2007 and I.A.No.604 of 2013 in I.A.No.366 of 2007 in O.S.No.179 of 2007 on the file of the District Munsif Court, Nilakottai dated 21.02.2014, are set aside and the application filed in I.A.Nos.603 and 604 of 2013 stands allowed. However, it is open to the respondent to file additional written statement refuting the allegations regarding encroachment and to raise all his objection in defence including limitation and it is made clear that for the purpose of limitation, the date of amendment petition is relevant.

12. Having regard to the pendency of the proceedings for a long time, this Court directs the District Munsif Court, Nilakottai, to expedite the trial and dispose the suit in O.S.No.179 of 2007 within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-I)

To  
The District Munsif,  
Nilakottai.

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+1cc to Mr.P.Santhana Krishnan, Advocate Sr.No.73876

+1cc to Mr.R.Rajaraman, Advocate Sr.No.73401

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