



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.09.2018
DELIVERED ON : 28.09.2018

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P. (PD) (MD) No.2302 of 2015
and
M.P. (MD) No.1 of 2015

Adaikalam

.. Petitioner/Petitioner/Plaintiff

Vs.

1.Poomalai
2.Chinnasamy
3.Maragatham @ Maragathathammal
4.Sethuraman
5.Mangalam

.. Respondents/Respondents/Defendants

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.720 of 2014 in O.S.No.133 of 2010 dated 25.08.2015 on the file of the District Munsif, Pattukottai, Thanjavur District by allowing this Civil Revision Petition.

For Petitioner	: Mr.D.R.Murugesan
For Respondent No.1	: Mr.C.Padmaraj
For Respondents 2 to 5	: No Appearance

ORDER

Heard Mr.D.R.Murugesan, learned counsel appearing for the petitioner and Mr.C.Padmaraj, learned counsel appearing for the first respondent.

2.This petition has been filed to set aside the fair and decreetal order passed in I.A.No.720 of 2014 in O.S.No.133 of 2010 dated 25.08.2015 on the file of the District Munsif, Pattukottai, Thanjavur District.

3.The petitioner who is the plaintiff in the suit, filed a suit against the respondents herein for declaration of title and for a permanent injunction and for mandatory injunction. The petitioner filed a petition in I.A.No.720 of 2014 for permitting



the petitioner to make amendment in the plaint for an alternative prayer of recovery of possession. The petition was dismissed by the trial Court and against the dismissal order, the petitioner has filed the present revision petition before this Court.

4. On the side of the petitioner, it is stated that the property is in the enjoyment of the petitioner but P.W.2 has wrongly deposed that the respondents are in enjoyment of the property and by way of this petition, the petitioner wants to amend the plaint with the alternative relief of recovery of possession.

5. On the side of the respondents, it is stated that P.W.2 has deposed that the property is in the enjoyment of the first respondent herein and the property is in the enjoyment of the respondents and the amendment will change the entire character of the suit itself and the revision petition is to be dismissed.

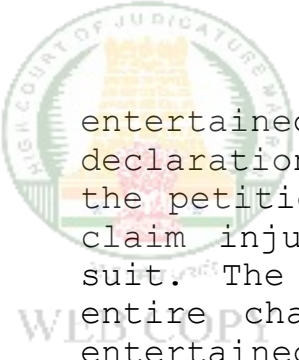
6. On the side of the petitioner, it is stated that under Order 6 Rule 17 of CPC, the amendment can be made any time and only the proviso stipulates that the amendment should not alter the character of the suit or the cause of action. P.W.2 meant to depose that the water was irrigated from the public land but he has deposed that the respondents are irrigating the land and prayed to allow the petition.

7. The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court of India in the case of **Gurbakhsh Singh and others v. Buta Singh and another** reported in **2018 (1) INLJ (SC) Civ 54**, which reads as follows:

"The High Court was of the view that Proviso to Order 6 Rule 17 of the CPC, as duly amended, laid down that once the trial had commenced, no amendment could be allowed unless the Court were to come to the conclusion that the party could not have raised the matter before the commencement of the trial despite due diligence-The nature of the amendment as proposed neither changes the character and nature of the suit nor does it introduce any fresh ground"

8. On the side of the respondents, it is stated that the prayer cannot be altered at the time of examination of the witness that to after the commencement of the trial.

9. Records perused. The specific case of the petitioner is that the petitioner is in possession of the property and permanent injunction against the respondents is prayed in the suit. The mandatory injunction is for execution of amendment in the title deed and now the petitioner wants to make amendment with the alternative prayer of recovery of possession. The prayer cannot be



entertained as the entire case of the petitioner is only for the declaration of title and for the permanent injunction. The case of the petitioner is that he is in possession. The petitioner cannot claim injunction as well as recovery of possession in the same suit. The amendment sought for by the petitioners changes the entire character of the suit and such an amendment cannot be entertained. The aforesaid citation is not applicable to this case. In this above circumstances, this Civil Revision Petition is dismissed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The District Munsif,
Pattukottai,
Thanjavur District.

Copy To:-

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.D.R.MURUGESAN, ADVOCATE IN SR No. 87639
+ 1 CC TO Mr.C.PADMARAJ, ADVOCATE IN SR No. 87518

MRN
TE/PM/SAR-4 : 29/10/2018 : 3P/6C

C.R.P. (PD) (MD) No.2302 of 2015
28.09.2018