



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2018

CORAM

THE HONOURABLE MR. JUSTICE **G.R.SWAMINATHAN**

C.R.P(MD) (PD).No.1136 of 2018
and
C.M.P(MD).No.4852 of 2018

1.Velappan
2.Subbu

... Petitioners/Petitioners/Plaintiffs
vs.

1.Pandian
2.Pandi

...Respondents/Respondents/Defendants

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the Ex-order and fair order dated 28.02.2018 made in I.A.No.610 of 2017 in O.S.No.49 of 2015 on the file of the District Munsif Court, Theni.

For Petitioners : Mr.R.Suriyanarayanan

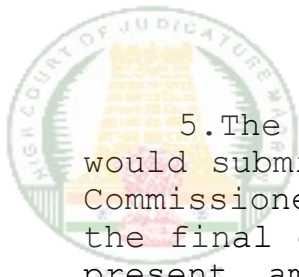
For Respondents : _Mr.M.A.M.Raja

O R D E R

The plaintiffs in O.S.No.49 of 2015 on the file of the District Munsif Court, Theni are the revision petitioners herein. It is a suit for permanent and mandatory injunction. After the trial commenced and after the cross-examination of P.W.1 was over, they took out I.A.No.610 of 2017 for amending the plaint. The Court below by an order dated 28.02.2018 dismissed the said interlocutory application. Challenging the same, this Civil Revision Petition has been filed.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the respondents/defendants pointed out that the revision petitioners have not shown sufficient diligence. He would point out that as per the Proviso under Order 6 Rule 17 C.P.C, if due diligence is not shown, post trial amendment cannot be permitted. The documents on the strength of which the amendment as of now is sought to be made was very much available even before the institution the suit itself.



5.The learned counsel appearing for the petitioners/plaintiffs would submit that the suit schedule was drawn based on the Advocate Commissioner's report in the earlier suit. He then realised that in the final decree it was differently drawn and that necessitated the present amendment. This shows negligence on the part of the petitioners. Therefore, even while allowing this civil revision petition by setting aside the order impugned, the revision petitioners will have to be put on terms.

6.The order impugned in this civil revision petition is set aside, this Civil Revision Petition is allowed. But the amendment will take into effect only with effect from the date of filing of I.A.616 of 2017. It will not relate back to the institution of the suit. The defendants are at liberty to file their additional written statement raising whatever plea including limitation that is available to them. The revision petitioner shall pay a sum of Rs.3,000/- (Rupees Three Thousand only) to the learned counsel appearing for the respondents in this civil revision petition, within a period of two weeks from the date of receipt of a copy of this order.

7.With the above direction, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RECORDS)

/True Copy/

Sub Assistant Registrar (CS-III)

To

To

1.The District Munsif Court, Theni.

+2cc to Mr.R.Suriyanarayanan, Advocate Sr.No.88609

RMK

KM/BK/SAR3/20.12.2018/2P/4C

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