



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2018
(Reserved on 10.11.2017)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.1709 of 2016
and
CMP (MD) No.8305 of 2016

P.Rajkumar

... Petitioner

vs.

M.Kalimuthu

... Respondent

Petition filed under Article 227 of the Constitution of India, against the order and decree made in I.A.No.162/16 in O.S.No.159 of 2012 dated 09.06.2016 on the file of the Principal District Munsif Court, Srivilliputtur.

For Petitioner : Mr.M.Thirunavukkarasu
For Respondent : Mr.N.Tamilmani

ORDER

This revision petition has been filed against the order made in I.A.No.162/16 in O.S.No.159 of 2012 dated 09.06.2016 on the file of the Principal District Munsif Court, Srivilliputtur.

2.The revision petitioner is the defendant and the respondent is plaintiff in O.S.No.159 of 2012 on the file of the Principal District Munsif Court, Srivilliputtur. The suit is for the relief of permanent injunction restraining the defendant and their men from interfering with the enjoyment of the plaintiff in the suit schedule property till he is evicted by due process of law. In the suit, PW1 has been examined in chief and Ex.P1 has been marked on the side of the plaintiff. On the side of the defendant, Exs.R1 to R3 have been marked. While the suit was posted for cross examination of PW1, present interlocutory application seeking amendment of pleadings has been filed in I.A.No.162/2016 in the year 2016. The said petition was allowed by the Trial Court by order dated 09.06.2016, against which, the defendant has filed the present revision petition.

3.Learned counsel for the petitioner would submit that the Trial Court without considering the fact that the suit is posted for cross examination of PW1 and at this stage, if petition for amendment is allowed, it will cause hardship to the defendant, allowed the present interlocutory application. It is further

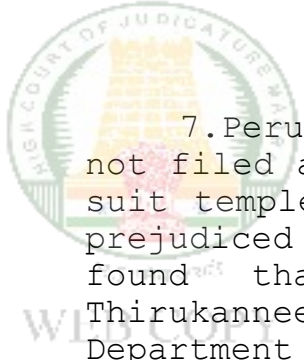


contended that the Trial Court erred in allowing the petition for amendment without taking note that the plaintiff by way of present amendment has taken a totally new case diametrically opposite to earlier case and therefore, the impugned order is liable to be set aside. It is also contended that PW1 has clearly admitted in his chief as well as cross examination that the suit property is a family trust property of defendant who is the present Agthar of Annakavadi Madam and the plaintiff is also paying lease amount to the defendant for the suit property and the other witnesses have also admitted that the defendant is Agthar of the temple and the suit property. Therefore, allowing the amendment petition at this stage is arbitrary. In support of his contention, the learned counsel relied on a judgment of the Hon'ble Supreme Court in Ram Niranjana Kajaria vs. Sheo Prakash Kajaria reported in 2016 (1) CTC 118.

4. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

5. Perusal of the records shows that the plaintiff filed the present I.A for amendment stating that he came to know that the defendant P. Rajkumar was not appointed as Agthar of the suit temple and the defendant temple is the sub-temple of Thirukanneeswarar temple which is under the control of HR&CE Department and the operation of Hundial is carried out by the department and the plaintiff wrongly filed the case against the defendant in the capacity of Agthar of the defendant temple assuming that he is the Agthar of the temple. Hence, the plaintiff sought to amend the suit in the individual name of the defendant. The defendant filed counter opposing the amendment stating that trial was commenced on 25.09.2015 and plaintiff was examined as PW1. Exs. A1 to A14 were marked to prove that his predecessors and himself are Agthar of the temple and property and the same was admitted by PW1 in his cross examination. Further, the petition for amendment has been filed after the period of five years from the date of filing of the suit and by way of amendment a totally new case has been taken by the plaintiff.

6. Perusal of the impugned order shows that the Trial Court observed that the plaintiff has not sought to amend the details of the schedule property, but only wants to amend the suit into the individual name of the defendant instead of representing the suit temple as Agthar. Further, the suit is not for declaration and the capacity of the defendant as Agthar is not sought to be declared. The Trial Court further observed that on allowing the amendment petition, the defendant will have an opportunity to file additional written statement and the Court would also frame additional issues. It has been further held that as per the Amended CPC, 2002, the amendment petition filed before trial of the case should be approached liberally and after the trial, it has to be strictly dealt with, however, if sufficient cause is shown, amendment can be allowed.



7. Perusal of the records shows that the revision petitioner has not filed any documentary evidence to show that he is Agthar of the suit temple and he has also not elucidated in what way he will be prejudiced by way of amendment. When the respondent himself has found that the defendant temple is the sub-temple of Thirukanneeswarar temple which is under the control of HR&CE Department and the operation of Hundial is carried out by the department and the revision petitioner is not connected in any way with the said temple, he has sought to amend the suit into the individual name of the revision petitioner stating that he has wrongly filed the case against the revision petitioner in the capacity of Agthar of the defendant temple instead of suing him in his individual name. In spite of due diligence, the respondent did not know that the revision petitioner was not the Agthar of the suit temple and only when he came to know that he is not Agthar, he has filed the present amendment petition stating that all along he was under the impression that the revision petitioner is Agthar of the suit temple. In my considered opinion, the impugned order passed by the learned Judge does not require any interference in the hands of this Court.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Srivilliputtur.

+1CC to Mr.N.Tamilmani, Advocate, SR.No. 42677

+1CC to Mr.M.Thirunavukkarasu, Advocate, SR.No. 42695

order made in
CRP (PD) (MD) No.1709 of 2016
18.01.2018

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AM/JC/SAR 1/29.01.2018/3P/4C