



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (PD) (MD)No.1769 of 2016
and
C.M.P. (MD)No.8543 of 2016

P.Kalavathi

... **5th Respondents/
5th Defendant**/Petitioner

vs.

1.M.Saravanakumar
2.M.Sathishkumar
3.Santha
4.M.Vijaya
5.M.Jaya
6.Hemalatha
7.Muthupandi ammal
8.A.Muthu Asari

... **Petitioners/Plaintiffs/
Respondents**

**(*) (Respondents 1 to 8 rep. by their power agent M.Sethupathy,
S/o. Madurai Veeran, Koodalalagar Perumal Koil Agraharam,
Madurai-1)**

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the order passed by the learned IV Additional District Judge, Madurai in I.A.No.260 of 2016 in O.S.No.149 of 2013 dated 27.06.2016 which is liable to be set aside by allowing this Revision Petition.

For Petitioner : Mr.S.Nateshraaja
For Respondents : Mr.N.Sathish Babu

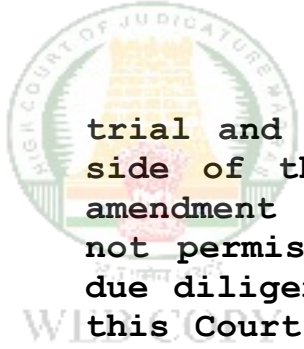
ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned IV Additional District Judge, Madurai in I.A.No.260 of 2016 in O.S.No.149 of 2013 dated 27.06.2016.

() "2. The facts of the case are that the suit in O.S.No.149 of 2013 was filed by the respondents herein/plaintiffs against the petitioner herein /5th defendant and others for the relief of bare injunction. The respondents filed I.A.No.260 of 2016 for amending the plaint to include the prayer for declaration, recovery of possession and mandatory injunction for Item No.5, which was allowed by the Court below. Aggrieved thereby, the petitioner herein / 5th defendant has filed this Civil Revision Petition.**

<https://hcservices.ecourts.gov.in/hcservices/>

3. According to the petitioner, after the commencement of the



trial and when the matter was posted for further evidence on the side of the plaintiffs, the respondents filed the petition for amendment and the same was allowed by the Court below, which is not permissible under CPC. The respondents had not pleaded any due diligence. The learned counsel further drew the attention of this Court to paragraph Nos.24, 25 and 26 of the plaint, wherein, it has been specifically stated that the respondents herein were in possession and enjoyment of the property. The suit was filed for the relief of bare injunction. By way of I.A., the plaintiffs sought for the relief of declaration and the trial court ought not to have allowed the same, after the commencement of trial. Therefore, he prays for interference.

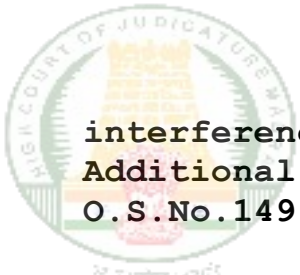
4. The learned counsel for the respondents states that since there was denial of the respondents' title over the suit property, I.A.No.1148 of 2015 was filed to appoint an advocate commissioner to inspect Item No.5 of the suit properties and accordingly, an advocate commissioner was appointed, who, in turn, inspected and found some super structure. Therefore, the relief of mandatory injunction and recovery of the possession has to be sought and as a result, the respondents filed the present amendment petition to amend the pleadings, valuation and court fee. He further states that the respondents herein / plaintiffs have got every right to file the amendment petition at any stage of the proceedings, as per the provisions of C.P.C.

5. Heard the learned Counsel appearing on both sides and perused the materials available on record.

6. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:-

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial".

7. Considering the facts and circumstances of the case and also the fact that the suit is of the year 2013 and trial has already been commenced before the lower Court, the order passed in I.A.No.260 of 2016 after the commencement of trial in O.S.No.149 of 2013, is impermissible. As per the above provision, unless and until due diligence is shown, the respondents cannot seek the relief to amend the plaint. In the present case, the respondents have not shown due diligence for amending the plaint. In my considered opinion, the learned Judge ought not to have allowed the application since the same would change the entire character of the suit. Therefore, the order of the Lower Court deserves



interference and accordingly, the order passed by the learned IV Additional District Judge, Madurai, in I.A.No.260 of 2016 in O.S.No.149 of 2013 dated 27.06.2016 is set aside.

8. This Civil Revision Petition is allowed accordingly. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs."

Sd/

Assistant Registrar (W)

(*)and(**)Amended as per order of this
Hon'ble Court dated 13.06.2018

Sd/

Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To

(***)To be Substituted the order already despatched on 03.05.2018

The IV Additional District Judge,
Madurai.

+1cc to Mr.S.NATESHRAJA, Advocate, SR.No.54096

+1cc to Mr.N.SATHISH BABU, Advocate, SR.No. 54055

C.R.P. (PD) (MD) No.1769 of 2016
09.03.2018

PNN

KK/JC/SAR-3/26.06.2018/3P-4C/