



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.1906 of 2016 (PD)
and
CMP(MD)No.9065 of 2016

1.Balu

2.S.Kumar ... Petitioners/Respondents/Defendants

Vs.

Mahalingam ... Respondent/Petitioner/Plaintiff

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 16.06.2016 made in I.A.No.86 of 2016 in O.S.No.239 of 2009 on the file of the Principal District Munsif Court, Kumbakonam.

For Petitioners : Mr.R.Vijayakumar

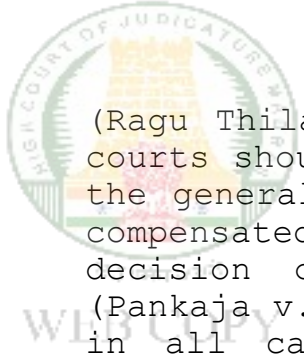
For Respondent : Mr.P.Thiyagarajan

ORDER

The revision petitioners are defendants in O.S.No.239 of 2009 pending before Principal District Munsif of Valangaiman @ Kumbakonam. It was filed as a suit for permanent injunction. The plaintiff was filed in 2005 and numbered and taken on file and subsequently it was transferred to the present court. The plaintiff took out I.A.No.86 of 2016 for amending his plaint and for incorporating the prayer of the mandatory injunction.

2.The case of the plaintiff is that in the year 2012, the defendants had put up certain constructions and that the same will have to be removed by issuing a decree for mandatory injunction. Since the suit was filed as one for permanent injunction, it is necessary to incorporate this additional relief also. A few others amendments were also sought. The court below by order dated 16.06.2016 allowed the said I.A as prayed for. Questioning the correctness of the said order, this Civil Revision Petition has been filed by the defendants.

3.The learned counsel appearing for the respondent/plaintiff would contend that the amendment in question was sought to be made at the pre-trial stage and that therefore, this Court ought to adopt an indulgent approach. He also placed reliance on the decision of the Hon'ble Supreme Court reported in (2001) 2 SCC 472



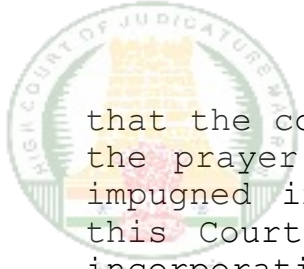
(Ragu Thilak D. John vs. S. Rayappan) to sustain the contention that courts should not be hyper-technical. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. He also placing reliance on the decision of the Hon'ble Supreme Court reported in (2004) 6 SCC 415 (Pankaja v. Yellappa) to contend that there is no absolute rule that in all cases where a relief is barred because of limitation, amendment should not be allowed.

4. This Court is unable to agree with the submission of the learned counsel for the respondents. As rightly contended by the learned counsel for the revision petitioners, this approach ought to be adopted only in those cases where the plea of limitation could be apparently disputed. In such situations, the same can be made subject matter of the issue after allowing the amendment prayer. But then, in this case, even a mere reading of the affidavit filed in support of I.A.No.86 of 2016 would show that it was patently barred by limitation. He wanted this Court to follow the decision of the Hon'ble Supreme Court reported in (2007) 4 MLJ 378(SC) (Shiv Gopal Sah v. Sita Ram saraugi). The Hon'ble Supreme Court had held as follows :

"It is quite true that this Court in a number of decisions, has allowed by way of an amendment even the claims which were barred by time. However, for that there had to be a valid basis made out in the application and first of all there had to be bona fides on the part of the plaintiffs and a reasonable explanation for the delay. It is also true that the amendments can be introduced at any stage of the suit, however, when by that amendment an apparently time barred claim is being introduced for the first time, there would have to be some explanation and secondly, the plaintiff would have to show his bona fides, particularly because such claims by way of an amendment would have the effect of defeating the rights created in the defendant by lapse of time. When we see the present facts, it is clear that no such attempt is made by the plaintiffs anywhere more particularly in the amendment application."

5. In this case, the suit was filed in the year 2005. Even according to the plaintiffs, encroachments by the defendants took place in the year 2012. Therefore, to seek the relief of mandatory injunction, an application ought to have been filed within a period of three years thereafter. The I.A in question was filed only in February 2016. Thus, three years had gone by during the intervening period. Therefore, by no stretch of imagination can one contend that the plea is not barred by limitation.

6. In this view of the matter, respectfully following the decision of the Hon'ble Supreme Court reported in (2007) 4 MLJ 378 (SC) (Shiv Gopal Sah v. Sita Ram saraugi), this Court is of the view



that the court below could not have allowed the plaintiff to include the prayer for mandatory injunction. To this extent, the order impugned in this Civil Revision Petition is set aside. However, this Court is of the view that the order allowing the prayer by incorporating new Survey No.288 of 2011 can very well be sustained. The plaintiff sought four amendments in all. First one is for incorporating the relief of mandatory injunction. Second one is for incorporating new survey number. Third one is for payment of court fee and the fourth one is for introducing one more schedule regarding the so called encroachment portion. It is made clear that this Court sustains the order of the court below only in respect of incorporating new survey number alone. In all other respects, the order impugned in this civil revision petition stands set aside. The court below shall not deny the plaintiff any relief if he is otherwise entitled to in law merely because the prayer for incorporating the relief of mandatory injunction has now been negatived. Accordingly, this Civil Revision Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Principal District Munsif of
Valangaiman @ Kumbakonam.

+1CC TO MR.R.VIJAYAKUMAR ADVOCATE IN SR.No.77895.
+1CC TO MR.P.THIYAGARAJ ADVOCATE IN SR.No.78239.

SKM

DS KAK SAR-2;03.09.2018; 3P/4C

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