



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.2363 of 2016
and
C.M.P. (MD) No.10994 of 2016

Muthiah ... Petitioner/Respondent/
Defendant

-vs-

Rajendran ... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair order and decreetal order made in I.A.No.136 of 2016 in O.S.No.46 of 2010 dated 11.08.2016 on the file of the District Munsif Court, Aranthangi.

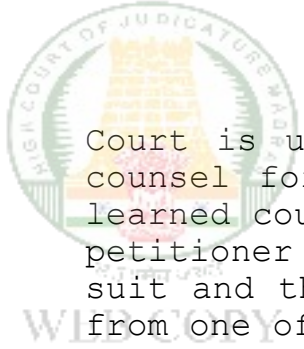
For Petitioner : Mr.N.Balakrishnan
For Respondent : Ms.Antony Mary Catherine
for P.Thirumahilmaran

ORDER

O.S.No.46 of 2010 was filed by the respondents herein before the Munsif Court, Aranthangi seeking the relief of declaration and permanent injunction. The revision petitioner is the sole defendant in the said suit. After the trial commenced, the plaintiff wanted to amend the plaint by including the prayer for recovery of possession. The amendment application was allowed as prayed for. Questioning the same, the defendant has filed the present Civil Revision Petition.

2.Heard the learned counsel on either side.

3.The learned counsel for the revision petitioner contended that this is a post trial amendment and therefore, the yardstick set out in the Proviso to Order 6 Rule 17 of CPC must be met. This



Court is unable to agree with the submissions made by the learned counsel for the revision petitioner. As rightly contended by the learned counsel appearing for the plaintiff, the construction by the petitioner appears to have been put up after the institution of the suit and therefore, the plaintiff had to modify the original prayer from one of injunction to one of recovery of possession.

4.As held by the Hon'ble Supreme Court in the decision reported in **2009 (6) SCC 415 [Neeti Malviya vs. Rakesh Malviya]** , the discretion of the Court depends on the facts and circumstances of the case and an amendment application which will avoid further litigation should always to be allowed. In this case, the learned counsel for the respondent / plaintiff pointed out that the declaratory relief has already been sought and what is now sought to be introduced is the prayer for recovery of possession in the place of prayer for injunction. This amendment became necessitated on account of developments that have taken place after the institution of the suit.

5.The Court below was right in allowing the application. No case is made out to interfere with the said order. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS-III)

To:

1.The District Munsif, Aranthangi.

+1 CC To MR.P.THIRUMAHILMARAN, Advocate SR. NO. 78586

C.R.P. (PD) (MD) No.2363 of 2016

TA

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