



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) Nos.569 and 2564 of 2016
and
C.M.P. (MD) .Nos.11549 and 2473 of 2016 in

C.R.P. (MD) .No.569 of 2016

Rajayyan

.. Petitioner/Petitioner/
Plaintiff in both petitions

vs.

1.St.Antonys Church
Mullanganavilai,
Paloor Village,
Vilavancode,
Kanyakumari District,
Rep. by its Parish Priest
Benny.

2.Dennys
3.Xavier
4.Mullanganvilai village Panchayat
Rep. by its President,
Prabha

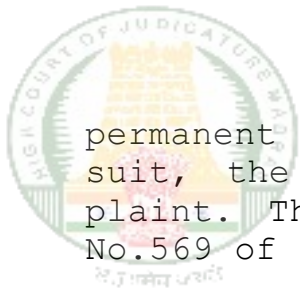
.. Respondents/Respondents/
Defendants
in both petitions

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.01.2016 passed in I.A.Nos.593 of 2015 and 99 of 2016 in O.S.No.271 of 2012 on the file of the Principal District Munsif, Kuzhithurai.

In both petitions:

For Petitioner : Mr.M.P.Senthil
For Respondents : Mr.R.Russel Raj

COMMON ORDER



permanent injunction as well as mandatory injunction. In the said suit, the plaintiff filed I.A.No.593 of 2015 for amending the plaint. The same was dismissed. Questioning the same, CRP(MD).No.569 of 2016 has been filed.

WEB COPY 2. Heard the learned counsel on either side.

3. The learned counsel for the respondent placing reliance on the decision of the Hon'ble Supreme Court reported in **AIR 2005 SC 2441** (Kailash vs. Nanhku and others) contended that the trial is deemed to have commenced from the date when the issues were settled. He therefore, contended that the standard set out in the proviso to Order 6 Rule 17 will apply since due diligence has not been established. The Court below rightly dismissed the IA taking note of its belated nature. He wanted this Court to sustain the order impugned in C.R.P(MD).No.569 of 2016.

4. Though the said submission raised by the learned counsel for the respondent is on the face of it attractive, I am of the view that the amendment sought for in this case very well be allowed. This is because the amendment has been taken out before the evidence was recorded. **Kailash vs. Nanhku and others** was rendered for the contest of an election petition. In fact, the Hon'ble Supreme Court framed the issue as to when the trial of election petition under Representation of the People Act, 1951, can be said to commence. An Election Petition in the very nature of things will have to be speedily disposed of. The statute contemplates that such petition should be disposed of within six months. Therefore, a ratio laid down in such a context cannot be applied to a regular suit.

5. In this view of the matter, I am of the view that the decision relied upon by the learned counsel for the respondent is clearly distinguishable. It is not in dispute that before the parties let in evidence, even before the filing of proof affidavit, the present amendment application was taken out. Therefore, I am of the view that the requirement of due diligence would not be applicable in this case. But, it is clarified that the amendment sought for by the plaintiff will come into force only with effect from the filing of I.A.No.593 of 2015. In other words, the amendment will not relate back to the institution of suit. Subject to this, C.R.P.(MD).No.569 of 2016 is allowed. No Costs.

6. In so far as C.R.P.(MD).No.2564 of 2016 is concerned, the plaintiff in O.S.No.271 of 2012 is the revision petitioner in C.R.P.(MD).No.2564 of 2016. The plaintiff took out an application for appointment of an Advocate Commissioner. According to the plaintiff, the report of the Advocate Commissioner is not complete. He therefore filed I.A.No.99 of 2016 for re-issuing the



warrant. The Court below dismissed the said IA. Questioning the same, this Civil Revision Petition has been filed.

7. As rightly pointed out by the learned counsel for the respondents, till now the Advocate Commissioner has not been examined. Therefore, I am of the view that this IA has been prematurely filed. In this view of the matter, the order impugned is sustained. Accordingly, C.R.P.(MD).No.2564 of 2016 is dismissed. No Costs. Consequently, connected miscellaneous petitions are dismissed. However, the petitioner is at liberty to file a fresh application after the examination of the Advocate Commissioner. If such an application is taken out, the same would be considered in accordance with law after hearing the respondents.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Principal District Munsif,
Kuzhithurai.
2. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.R.RUSSEL RAJ, ADVOCATE IN SR No. 82263
+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 82543

PJL

TE/SKN/SAR-4 : 14/11/2018 : 3P/6C

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2564 of 2016
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