



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM:

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) No.1095 of 2013
and
M.P. (MD) No.1 of 2013

M.Jeganathan

... Petitioner

Vs.

1.M.Rethinam

2.R.Muthu

3.R.Neduncheliyan

4.R.Pandiyan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order in I.A.No.885 of 2012 in O.S.No.123 of 2007 on the file of the District Munsif Court, Pudukkottai, Pudukkottai District dated 06.02.2013, and allow the Civil Revision Petition.

For Petitioner : Mr.S.Muthalaraj

For Respondent : Mr.A.Arumugam
for M/s.Ajmal Associates

ORDER

The plaintiff in O.S.No. 123 of 2007 on the file of the learned District Munsif Court, Pudukkottai, Pudukkottai District is the revision petitioner. He filed the above said suit for permanent injunction restraining the defendants from encroaching into the suit property. The first defendant is the father of the second, third and fourth defendants. Though the suit is filed only for permanent injunction, the trial Court has framed the issues initially to find out who is in possession of the suit scheduled property. After evidence was over and matter was posted for arguments. The revision petitioner / plaintiff filed I.A.No.885 of 2012 in O.S.No.123 of 2007 to amend the prayer for declaration of title.



plaintiff has filed this application for amendment immediately thereafter. The trial Court has rejected the Interlocutory Application on the ground that it is only to drag on the proceedings.

3. The learned counsel appearing for the revision petitioner submitted that there is no necessity for the plaintiff to drag on the proceedings. Since there is no need to adduce further evidence, the petition for amendment has not been filed with an intension to drag on the proceedings.

4. Though the learned counsel appearing for the respondents / defendants vehemently contended that this Interlocutory Application is in-admissible because of delay. Hence, it has to be seen whether delay is inordinate and whether the delay is likely to cause prejudice is the case of the other side.

5. In this case, the trial Court has found that the intension of the revision petitioner / plaintiff is to drag on the proceedings. It may not be so for the reason that the revision petitioner is the plaintiff and he has filed the petition seeking amendment of prayer to include declaration of title instead of a simple suit for permanent injunction.

6. In the matter of amendment of pleadings, unless the amendment changes the character of the suit or enlarges the scope of the suit, it can be allowed. The only reason stated by the trial Court to dismiss the Interlocutory Application to amend the plaint is that there is a delay on the part of the revision petitioner which he has failed to explain. The plaintiff's claim is based on title as a successor in interest of one Karuppayee Ammal. However, the defendants claim title on the basis of oral gift by the said Karuppayee Ammal.

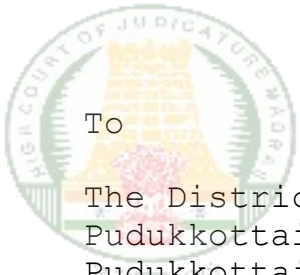
7. Having regard to the nature of the pleadings in this case and the dispute, this Court is of the view that the plaintiff can be allowed to amend the plaint in the interest of justice. As a result, this Civil Revision Petition is allowed and the order passed by the learned District Munsif Court, Pudukkottai, Pudukkottai District in I.A.No.885 of 2012 in O.S.No.123 of 2007 dated 06.02.2013 is set aside, subject to the condition that the revision petitioner / plaintiff shall pay a sum of Rs.5,000/- to the respondents as costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-IV)



To

The District Munsif,
Pudukkottai,
Pudukkottai District.

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+1CC to Mr.NA.Palaniyandi Advocate in SR.No.70401.

GNS

DS/PN/SAR-4 :23.07.2018: 3P/3C

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