

IN HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.2332 of 2015

Senthoorvelavan

... Petitioner

VS

1.Rukmani

2.Prabhakaran

3.Baskaran

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 26.11.2014 passed in I.A.No.1043 of 2014 in O.S.No.87 of 2004 by the Learned District Munsif, Attur.

For petitioner

: Mr.M.Kamalanathan

For Respondents

: Mr.K.Ponmani for

M/s. Zeenath Begum

ORDER

The petitioner has been filed the present Civil Revision Petition to set aside the impugned order dated 26.11.2014 passed by the learned District Munsif, Attur in I.A.No.1043 of 2014 in O.S.No.87 of 2004.

2.By the impugned order the lower Court has dismissed I.A.No.1043 of 2014 filed by the petitioner seeking for amendment of the plaint under Order 6 Rule 17 of CPC.

3.The said suit was filed for a bare injuntion in the year 2004 by the petitioner when he named Murugan. Thereafter, it is stated that he changed his name to the present name Senthooravelavan. In the present Civil Revision Petition, the petitioner has challenged the impugned order dismissing the application filed for amendment of the plaint.

4.In the course of the proceedings, an Advocate Commissioner was appointed vide order passed in I.A.No.319 of 2004 in O.S.No.87 of 2007. The Advocate Commissioner had filed his report with sketch. The petitioner thereafter filed I.A.No.1310 of 2011 to amend the plaint which was allowed on 09.03.2012.

5. Thereafter, pursuant to the report of the Advocate Commissioner, the petitioner filed another I.A.No.1043 of 2014 to amend the plaint for the second time which was dismissed by the impugned order dated 26.11.2014. Therefore, the present Civil Revision Petition has been filed by the petitioner to set aside the same.

6. The learned counsel for the petitioner submitted that though the second application for amendment of the plaint has been filed long after the Advocate Commissioner's report was submitted on 15.12.2006. Nevertheless, the application was a pre trial application and therefore no prejudice has been caused to the respondents if the court had allowed the application.

7. The learned counsel for respondents submits that the amendment is barred under law and therefore cannot be allowed. It is submitted that the impugned order is well reasoned and further there is delay of 8 years in filing the amendment application from the date of the report of the Advocate Commissioner and therefore requires no interference.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

9.It is noticed that the suit was originally filed for a bare injunction. Thereafter the petitioner filed I.A.No.1310 of 2011 for a declaration which was allowed pursuant to which the plaint was amended in year 2004. Thereafter, the respondents also filed their written statement. In 2014, the petitioner filed another application vide I.A.No.1043 of 2014 for amendment of the plaint for the second time. The only amendment that has been sought for was to include a prayer No.5 b (i), which read as under:-

b (i) Directing the defendants to remove the toilet in ACE portion for using the suit land without any hindrance by means of an order of mandatory permanent injunction.

10.Though, the application has been filed after 8 years from appointment of an Advocate Commissioner, it is also noticed that the application was filed before the commencement of trial. Therefore, no prejudice will be caused if the amendment is allowed subject to rights of the respondents to raise their objection

regarding the limitation. Therefore, I am inclined to allow the present Civil Revision Petition on payment of cost.

11.The petitioner is therefore directed to deposit a sum of Rs.3,000/- to the credit of the above suit within a period of four weeks from the date of receipt of a copy of this order. On such deposits the respondents shall be entitled to receive the same.

12.It is noticed that the suit is of the year 2004 and the application is of the year 2014. However, no trial has commenced. Therefore, the lower court is directed to dispose the above suit within a period of six months from the date of receipt of a copy of this order.

13.The present Civil Revision Petition thus stands allowed with the above observations. सत्यमेव जयते

Index :Yes/No
Internet :Yes/No

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To

1.The District Munsif Court,
Attur.

2.The Section Officer,
V.R. Section, High Court, Madras.

C.SARAVANAN, J.

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