

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	01.07.2019
Pronounced On	09.07.2019

CORAM

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

C.R.P.(PD).No.4627 of 2015
and
M.P.No.1 of 2015

C.S.Abdul Hakeem

... Petitioner

vs.

1.Babulal Ranka

2.Sarla Ranka

3.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai – 600 003.

4.The Junior Engineer,
Corporation of Chennai,
Corporation Division, Chennai.

5.Mahendran

6.Surendran

7.Rajendran

... Respondents

Prayer: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.12530 of 2015 in O.S.No.971 of 2003 by the Hon'ble III Assistant City Civil Court, Chennai.

For Petitioner : Mr.Mubena Almas
For R1, R2, R5 to R7 : Mr.Prasanna .D for
M/s. Giridhar and Sai
For R3 & R4 : Mr.Senthil Kumar

ORDER

The petitioner is aggrieved by impugned the fair and decretal order dated 28.10.2015 in I.A.No.12530 of 2015 in O.S.No.971 of 2003 passed by the III Assistant City Civil Court, Chennai.

2.The said application was filed by the petitioner to amend the description of the suit schedule property in the plaint by giving the exact extent of the property, which is said to have been allegedly encroached by the respondents 1, 2, 5, 6 and 7 who are subsequent purchasers of the property from the co-owners of the suit property.

3.According to the petitioner, these respondents have put up unauthorized construction and in these circumstances the above application was also filed by the petitioner for an appointment of an Advocate Commissioner to give details. The Advocate Commissioner has also given a report that the respondents have encroached on the common passage.

4.The Advocate Commissioner categorically mentioned that the encroachment is of 2 feet by these respondents. However, the report has not categorically mentioned the exact location of the encroachment. Under these circumstances, the petitioner filed I.A.No.12530 of 2015 to amend the plaint to describe the encroachment.

5.The learned counsel for the petitioner submitted that the Court had dismissed the application for amendment to the plaint, merely on the ground that the case was listed for arguments.

6.The learned counsels appearing for the respondents submitted that the order passed by the Lower Court was well reasoned and requires no interference.

7.Heard, learned counsels for the petitioner and the respondents and learned counsel for the Corporation / Respondents 3 and 4.

8.In **Kumar Mehra vs Roop Rani Mehra**, (2018) 2 SCC 132 a detailed observation was made on Order 6 Rule 17 and amendment was allowed by placing reliance on **Salem Advocate**

Bar Assn. (2) vs Union of India, (2005) 6 SCC 344. Relevant paragraphs in the said judgement reads as follows:-

"13. Order 6 Rule 17 CPC, as it now exists, is as follows:

"17. Amendment of pleadings.—The court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

14. By Amendment Act 46 of 1999, with a view to shorten litigation and speed of the trial of the civil suits, Rule 17 of Order 6 was omitted, which provision was restored by Amendment Act 22 of 2002 with a rider in the shape of the proviso limiting the power of amendment to a considerable extent. The object of newly inserted Rule 17 is to control filing of application for amending the pleading subsequent to commencement of trial.

Not permitting amendment subsequent to commencement of the trial is with the object that when evidence is led on pleadings in a case, no new case be allowed to set up by amendments. The proviso, however, contains an exception by reserving right of the Court to grant amendment even after commencement of the trial, when it is shown that in spite of diligence, the said pleas could not be taken earlier. The object for adding proviso is to curtail delay and expedite adjudication of the cases.

*15. This Court in **Salem Advocate Bar Assn. (2) v. Union of India** [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344] has noted the*

object of Rule 17 in para 26 which is to the following effect: (SCC pp. 365-66

"26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."

9. The Hon'ble supreme court in the case of **Rajesh Kumar Aggarwal vs K.K. Modi**, (2006) 4 SCC 385 interpreted Order 6 Rule 17 of CPC and stated as follows:-

"15. The object of the Rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties."

10. Though the amendment was sought for after recording of evidence and trial, the court could have allowed amendment if it was shown in spite of diligence, the said pleas could not have been taken earlier.

11. Although Order 6 Rule 17 permits amendment in the pleadings "at any stage of the proceedings", but a limitation has been engrafted by means of proviso to the effect that no application for amendment shall be allowed after the trial is commenced.

12. In this case, the Advocate Commissioner had given his report in the month of August, 2009 and the trial commenced on 10.02.2010 with the filing of the proof affidavit

13. The petition for amendment was filed only in the month of August 2015. Thus, the petitioner has not shown any diligence in filing application earlier after the report of Advocate Commissioner.

14. Therefore, I do not find any reasons to interfere with the impugned order. It is noticed that the suit is of the year 2003.

Therefore, the City Civil Court, Chennai is directed to dispose the

suit within a period of six months from the date of receipt of a copy of this order.

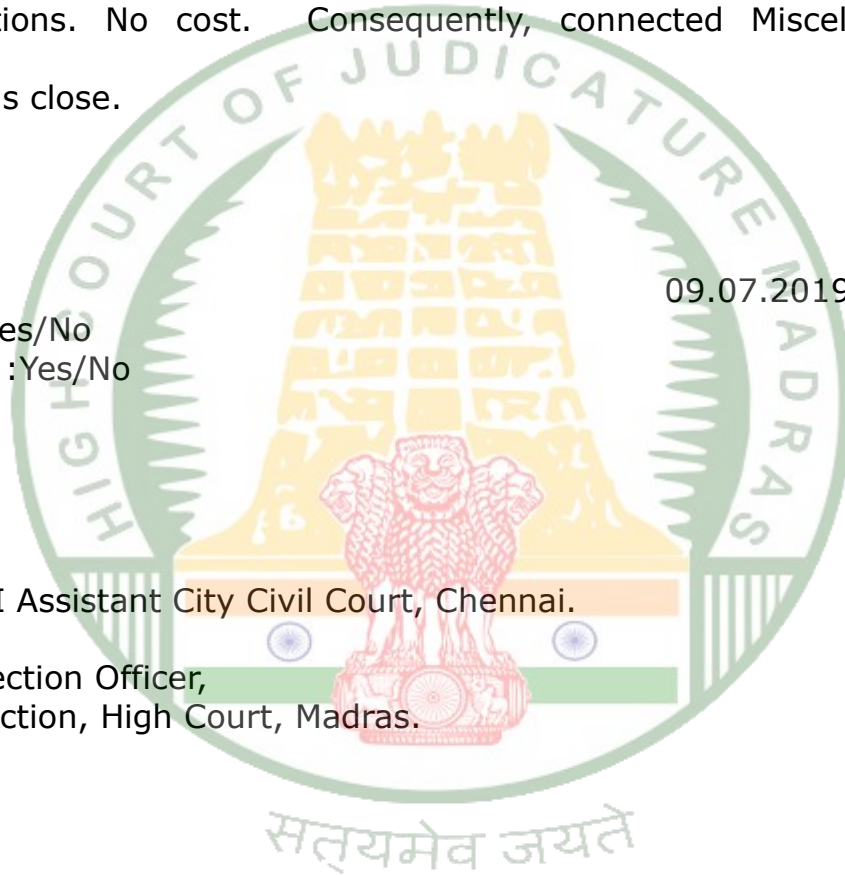
15.The Civil Revision Petition is thus dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is close.

09.07.2019

Index :Yes/No
Internet :Yes/No
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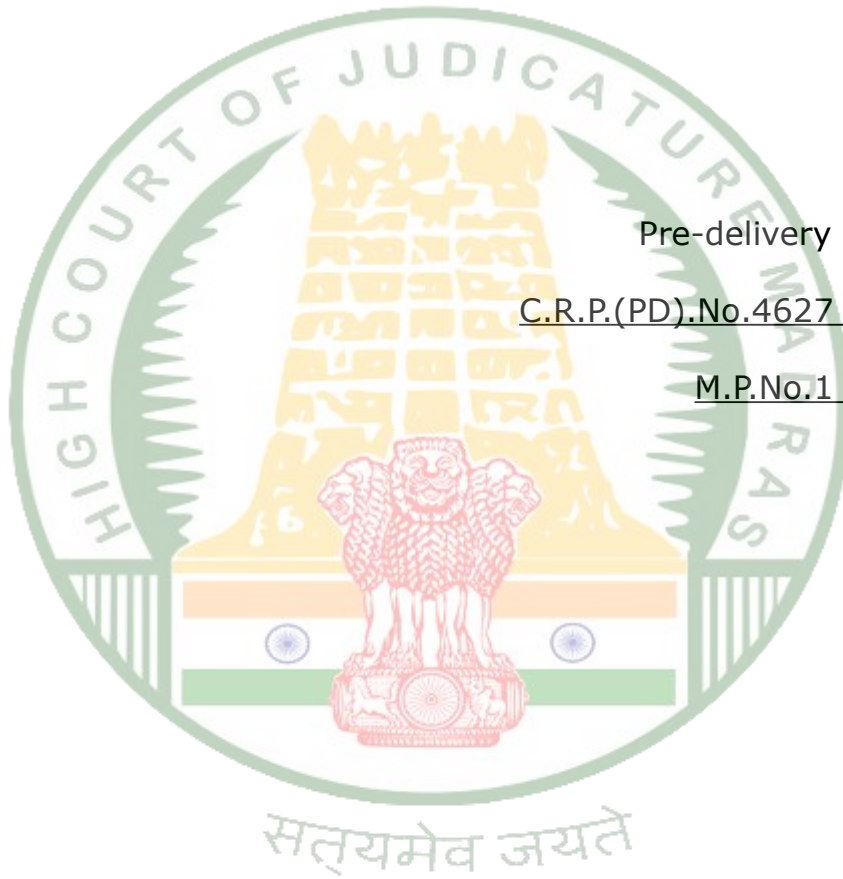
- 1.The III Assistant City Civil Court, Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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C.SARAVANAN, J.

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Pre-delivery order in

C.R.P.(PD).No.4627 of 2015
and
M.P.No.1 of 2015

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