

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP PD NO.3346 of 2013 and
M.P.No.1 of 2013

S.Kadhiresan ... Revision Petitioner

Vs.

K.Venkatachalam ... Respondent

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India against the order dated 02.12.2011 passed in I.A.No.797 of 2011 in O.S.No.134 of 2003 by the Additional District M6unsif, Thiruchengode.

For Revision Petitioner : Mr.N.Manokaran

For Respondent : Mr.L.Mouli

ORDER

Revision Petition filed against the dated 02.12.2011 passed in I.A.No.797 of 2011 in O.S.No.134 of 2003 by the Additional District M6unsif, Thiruchengode, allowing the application for amendment to incorporate the prayer for recovery of possession.

2. The revision petitioner is the defendant in the suit in O.S.No.134 of 2003. Originally the suit was filed by the respondent herein, the plaintiff, for declaration of his title over the item No.1 of suit properties and permanent injunction.

3. It is alleged by the plaintiff that during the pendency of the suit, the defendant encroached a portion of the suit properties and hence he filed an application to appoint an advocate commissioner and commissioner was also appointed and he filed his report, indicating the alleged encroachment. Therefore, the plaintiff has filed an application seeking permission to amend the prayer column of the plaint by incorporating the prayer of recovery of possession of the encroached portion from the defendant.

4. The trial court taking note of the allegations and also the fact that the alleged encroachment appeared to be taken during the pendency of the suit, allowed the application. Aggrieved over the said order, the revision petitioner has come with this revision.

5. I have perused the materials. The main contention of the revision petitioner before this court is that in the suit, PW1 was examined and amendment after commencement of trial is not

permissible and that the amendment will change the character of the suit. According to the petitioner, the amendment is barred by limitation.

6. No doubt, after amendment of the Code of Civil Procedure in the year 2002, the amendments of prayer after trial, cannot be permitted, except the circumstances which warrant for such amendment. The specific allegation of the plaintiff is that during the pendency of the suit, the defendant has encroached upon a portion of the properties. Immediately, he filed an application for appointment of advocate commissioner and accordingly an advocate commissioner was also appointed and he filed his report substantiating the version of the plaintiff. Therefore, the plaintiff has filed a petition before the trial court for amendment in the prayer column to incorporate the prayer for vacant possession. The trial court has taken all these facts and allowed the said application. Hence, it cannot be contended that the amendment cannot be permitted after trial. When the allegation of the plaintiff itself indicated that there was an encroachment during the pendency of the suit, the only option available to the plaintiff is to seek recovery of possession. Accordingly, the plaintiff has rightly filed an application seeking permission to amend the plaint to incorporate the said relief. The trial court has also allowed the said application.

Hence, this court does not find any infirmity on the orders passed by the trial court.

7. In the result,

(i) The revision petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed. The order of trial court is confirmed.

(ii) The trial court is directed to dispose of the suit within four months from the date of receipt of a copy of this order.

12.02.2019

Index : Yes / No
Internet : Yes / No
speaking/non speaking
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To

The Additional District Munsif.
Thiruchengode.

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N.SATHISHKUMAR, J.
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