

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P. (PD) No.4551 of 2013

and

M.P.No.1 of 2013

1.V.Ekambaram
2.V.Seethapathy

...

Petitioners

Vs.

1.O.Kuppusamy
2.P.Kotandan
3.P.Dasarathan

...

Respondents

Prayer :- The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 18.03.2013 made in I.A.No.231 of 2012 in O.S.No.351 of 2008 on the file of the District Munsif Court, Tiruvallur.

For Petitioners

: Mr.M.S.Subramanian

For Respondent
No.1

: Mr.K.Balaji

Respondent Nos. 2 & 3

: No appearance

ORDER

The instant revision has been filed challenging the order dated 18.03.2013 passed in I.A.No.231 of 2012 in O.S.No.351 of 2008 by the District Munsif Court, Thiruvallur.

Brief facts leading to the filing of the revision:

2. The petitioners are the plaintiffs in the suit O.S.No.351 of 2008 pending on the file of the District Munsif Court, Thiruvallur. The petitioners filed a suit for declaration and injunction in respect of the suit schedule property in O.S.No.351 of 2008 before the District Munsif Court, Thiruvallur against the respondents. The respondents have also filed their written statement in O.S.No.351 of 2008 before the District Munsif Court, Thiruvallur. I.A.No.231 of 2012 was filed by the petitioners under Order 6 Rule 17 CPC seeking amendment of the pleadings in the plaint filed in O.S.No.351 of 2008 as detailed hereunder:

"1. Delete "1982" occurred in 11th Sentence of Para 4 of the Plaint and Substitute "1949".

2.Delete " C.Boli Chetty, S/o.Chinna Kutty Chetty" occurred in 11th and 12th sentence of para 4 of the Plaint and substitute "P.Othaiyappa Chetty", S/o.C.Boli Chetty".

3. According to the petitioners, the necessity for amendment was required for the following reason ;

(a) the petitioners' father purchased 4th item of the suit schedule property orally from P.Othaiyappa Chetty, S/o.C.Boli Chetty during the 3rd week of Masi month of 1949.

4. According to the petitioners, in the plaint, due to sheer confusion, they have stated in para - 4 of the plaint that the 4th item of the suit schedule property has been purchased orally by their father from C.Boli Chetty during the 3rd week of Masi month of 1982. According to the petitioners, it is only from the son of C.Boli Chetty viz., P.Othaiyappa Chetty, the suit property has been purchased by their father orally in 1949. It is the contention of the petitioners that the mistake crept in due to their gullible nature in providing improper information while preparing the plaint. According to them, the mistake made in the plaint was noticed by them only after the written statement was filed by the first respondent/first defendant in the suit.

5. A counter affidavit was also filed by the respondents, who are the defendants in the suit, in I.A.No.231 of 2012 filed by the petitioners before the trial Court. It is the case of the respondents that if the amendment sought for by the petitioners in I.A.No.231 of 2012 in

O.S.No.351 of 2008 is allowed, it would amount to change in the cause of action. According to them, the petitioners want to put forth a new case, which is contra to the earlier pleadings. The trial Court by its order dated 18.03.2013 dismissed I.A.No.231 of 2012 in O.S.No.351 of 2008 filed by the petitioners. Aggrieved by the dismissal of the I.A.No.231 of 2012 in O.S.No.351 of 2008, the instant revision has been filed by the petitioners, who are the plaintiffs in the suit.

6. Heard Mr.M.S.Subramanian, learned counsel appearing for the petitioners and Mr.K.Balaji, learned counsel appearing for the respondents.

DISCUSSION:

7. This Court has perused the impugned order dated 18.03.2013 dismissing I.A.No.231 of 2012 in O.S.No.351 of 2008. The trial Court has dismissed I.A.No.231 of 2012 on the ground of delay on the part of the petitioners in filing the amendment application and also on the ground that if the amendment application is allowed, it would amount to a new cause of action, which is not permissible under law.

8. The suit has been filed by the petitioners in O.S.No.351 of 2008 to declare that the petitioners are the absolute owners of the suit schedule property and they have also sought for permanent injunction

restraining the respondents, who are the defendants in the suit, from interfering with their peaceful possession and enjoyment of the suit schedule property. The amendments sought for by the petitioners in I.A.No.231 of 2012 in O.S.No.351 of 2008 are detailed hereunder:

"1. Delete "1982" occurred in 11th Sentence of Para 4 of the Plaint and Substitute "1949".

2.Delete " C.Boli Chetty, S/o.Chinna Kutty Chetty" occurred in 11th and 12th sentence of para 4 of the Plaint and substitute "P.Othaiyappa Chetty", S/o.C.Boli Chetty".

9.The petitioners in the amendment application want to amend the year of purchase of the suit schedule property by the plaintiffs' father from the respondents' grandfather C.Boli Chetty. In the plaint, they have mentioned the year of purchase by the plaintiffs' father as 1982 but according to them, the correct year is 1949, which has also been confirmed in the written statement filed by the respondents in O.S.No.351 of 2008. The next amendment sought for by the petitioners in I.A.No.231 of 2012 is to delete the name of C.Boli Chetty, S/o Chinna Kutty Chetty, which is mentioned in 11th & 12th sentence of paragraph 4 of the plaint and substitute the same with P.Othaiyappa Chetty S/o.C.Boli Chetty. It is also the case of the petitioners that only due to confusion, the petitioners could not incorporate the correct year of purchase of the

suit schedule property by the petitioners' father from the respondents' grandfather in the plaint and wrong name was also mentioned in 11th & 12th sentence of paragraph 4 of the plaint.

10. Under Order 6 Rule 17 CPC, the Court may at any stage of the proceedings allow either party to alter or amend its pleadings for the purpose of determining the real question in controversy between the parties.

11. In the instant case, it is the case of the petitioners that only due to inadvertence, the year of purchase was wrongly mentioned and the name of the purchaser was also wrongly mentioned as C.Boli Chetty, S/o.Chinna Kutty Chetty instead of P.Othaiyappa Chetty S/o. C.Boli Chetty and further I.A.No.231 of 2012 was also filed only before the commencement of trial. In the considered view of this Court, the amendments sought for by the petitioners will not alter the character of the suit and if it is allowed will not prejudice the rights of the respondents to contest the suit on merits. Considering the nature of the suit and the nature of the controversy involved in the suit, the trial Court ought to have allowed the amendment application. Therefore, this Court is of the considered view that the finding of the trial Court that the amendment application has been filed belatedly and if it is allowed, it will alter the character of the suit and bring forth a new cause of action is erroneous.

12. In the result, the order dated 18.03.2013 passed in I.A.No.231 of 2012 in O.S.No.351 of 2008 by the trial Court is hereby set aside and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. However, considering the year of the suit, this Court directs the petitioners to carry out the amendment as sought for in I.A.No.231 of 2012 in O.S.No.351 of 2008 within a period of 4 weeks from the date of receipt of a copy of this order and the trial Court is directed to dispose of the suit, after the amendment is carried out in the plaint, within a period of three months thereafter. The respondents are also given liberty to file additional written statement, if any, before the trial Court, after the amendments are carried out in the plaint.

Index : Yes / No
Internet : Yes / No
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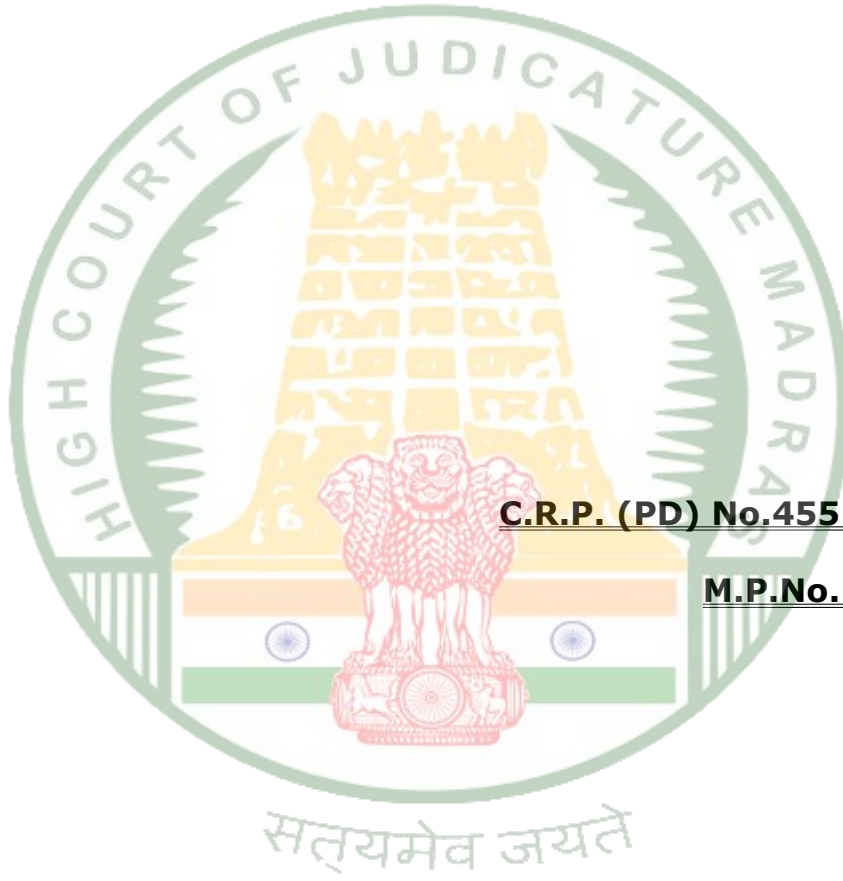
09.01.2019

To
The District Munsif Court, Tiruvallur.

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ABDUL QUDDHOSE,J.

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