



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD) No.1389 of 2012

and M.P.No.1 of 2012

WEB COPY

1.Paramasivam
2.Madasami
3.Lakshmiammal

... Petitioners/Petitioners/Plaintiffs

-vs-

Thomas

... Respondent/Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 29.02.2012 passed in I.A.No.321/2011 in O.S.No.103/2008 on the file of the Principal District Munsif Court, Nanguneri.

For Petitioners : Mr.T.Selvan
For Respondent : Mr.M.P.Senthil

O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below dismissing the application filed under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of pleadings and for adding the relief of mandatory injunction.

2. The petitioners are the plaintiffs in the suit. The suit was filed against the respondent/defendant seeking for the relief of declaration and consequential permanent injunction. During the pendency of the suit, an Advocate Commissioner came to be appointed and he also filed his report on 21.12.2009.

3. The petitioners filed an application for amendment of pleadings on the ground that during the pendency of the suit, the respondent/defendant has to put up some construction in one of the items of the suit property and therefore, necessary pleadings will have to be incorporated in the plaint and an additional relief of mandatory injunction will have to be sought for. This application was resisted by the respondent.

4. The Court below dismissed the application mainly on the ground that the petitioners are adopting dilatory tactics and they are not allowing the suit to progress and the suit was ripe for



trial. Therefore, the Court below refused to entertain the application.

5. The learned counsel appearing for the petitioners submitted that the construction was put up during the pendency of the suit and therefore, it became necessary for the petitioners to seek for the relief of mandatory injunction. The learned counsel submitted that the amendment that was sought for was a pre-trial amendment and the amendment was necessitated by the fact that the subsequent development happened during the pendency of the suit. Therefore, the Court below ought to have entertained the application and whatever objections the defendant had could have been properly addressed by allowing the defendant to file an additional written statement.

6. The learned counsel appearing on behalf of the respondent submitted that the construction was not put up during the pendency of the suit and the relief that was claimed by the petitioners is barred by limitation. The learned counsel further submitted that the Court below has categorically found that the petitioners were only trying to drag-on the proceedings and therefore, there is no ground to interfere with the order passed by the Court below.

7. This Court has carefully considered the submissions made on either side and the the materials available on record.

8. The specific case of the petitioners is that some construction has been put up in one of the items of the suit property, during the pendency of the suit and therefore, it became necessary for the petitioners to make necessary amendments in the plaint and seek for the additional relief of mandatory injunction. The petitioners have stated that the amendment was necessitated due to the subsequent development that took place during the pendency of the suit.

9. The amendment was sought for within a reasonable time and this Court does not find that the petitioners have approached the Court with any delay. Therefore, the Court below must have entertained the application. The respondent/defendant will have an opportunity to file an additional written statement and take a stand regarding the additional relief sought for by the petitioners. Ultimately, the Court will have to independently consider those objections on merits and it will not be necessary to go into the same at the initial stage.

10. In view of the above, this Court is of the considered view that the Court below ought to have entertained the application and permitted the petitioners to amend the pleadings. The respondent should have been permitted to file an additional written statement and the case could have been heard on merits. The fair



and final order passed by the Court below requires interference by this Court.

11. In the result, the fair and final order passed by the Court below in I.A.No.321/2011 is hereby set aside. The application filed by the petitioners is allowed and the petitioners are permitted to carry out the amendment. The amendment will have to be carried out within two weeks from the date of receipt of the copy of this order. Thereafter, the respondent/defendant shall be permitted to file their additional written statement by raising all the pleas both factual and legal.

12. This Civil Revision Petition is accordingly allowed and the Court below is directed to complete the proceedings in O.S.No.103/2008 within a period of four months from the date of receipt of copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal District Munsif Court,
Nanguneri.

+1 CC to Mr.T.SELVAN, Advocate (SR-94599[F] dated 25/10/2019)

+1 CC to Mf.M.P.SENTHIL, Advocate (SR-95051[F] dated 31/10/2019)

C.R.P. (PD) (MD) No.1389 of 2012

25.10.2019

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