



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (PD) (MD)Nos.1933 and 1934 of 2010

and

M.P. (MD)No.1 of 2010

in

C.R.P (PD) (MD)No.1933 of 2010

M.K.Palaniappan : Petitioner/Petitioner/Plaintiff
in both cases

.. Vs ..

1.M.K.Chellappan
2.S.Ramalingam
3.S.Arulsamy : Respondents/Respondents/Defendants
in both cases

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order in I.A.Nos.450 and 451 of 2010 in O.S.No.152 of 2010 on the file of the Additional District Munsif Court, Karur, dated 11.08.2010.

For Petitioner : Mr.M.P.Senthil
in both cases
For Respondents : Mr.K.Govindarajan
in both cases

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COMMON ORDER

These two Civil Revision Petitions arise from the order passed by the learned Additional District Munsif, Karur, dismissing the petition for amendment of plaint and the interlocutory application filed by the revision petitioner for injunction.

2.The brief facts that are necessary for the disposal of these two Civil Revision Petitions are as follows:

2.1.The revision petitioner is the plaintiff in O.S.No.152 of 2010 on the file of Additional District Munsif Court, Karur. The suit is in respect of two items. The suit is for permanent injunction restraining the defendants and their men from in any manner interfering with the petitioner's peaceful possession and



enjoyment of the suit property including the running of rice mill, namely, M/s.Sri Karuppannasamy Rice Mill. In the plaint that was originally filed by the revision petitioner, the revision petitioner has stated in paragraph 13 as follows:

WEB COPY "It is needless to mention that the plaintiff and the first defendant herein are jointly running another rice mill in the name and style as Sri Sellandiamman Modern Rice Mill at Moolakattanoor, S.Vellalapatti Post, Karur Taluk."

2.2.The first defendant filed an elaborate written statement. Thereafter, during the pendency of the suit the petitioner filed a petition in I.A.No.262 of 2010 for getting temporary injunction in respect of the suit items 1 and 2. The interlocutory application was also contested by the respondents by filing a counter. It is in the stated circumstances, the revision petitioner filed a petition for amendment of plaint in I.A.No.450 of 2010. The details of amendment sought for by the revision petitioner is to substitute paragraph 13 in the following manner:

"It is needless to mention that the plaintiff and the first defendant herein were jointly running another rice mill in the name and style as Sri Karuppanna Samy Modern Rice Mill at Moolakattanoor, S.Vellalapatti Post, Karur Taluk and the same was closed on 05.01.2010 by mutual consent."

The plaintiff filed another application in I.A.No.451 of 2010 to amend the affidavit filed in I.A.No.262 of 2010 which is in tune with the amendment, the revision petitioner is seeking in respect of plaint. The trial Court dismissed both the interlocutory applications on the ground that the amendment is to withdraw the statement on fact which is crucial and material to the case. The trial Court further held that the petitioner cannot file a petition for amendment at that stage, even if his contention is that the original plaint in paragraph 13 contains a mistake and crept in by inadvertence. The learned Counsel appearing for the revision petitioner submitted that the amendment petition was filed by the revision petitioner long before the commencement of trial and that the petitions are liable to be allowed having regard to the fact that the petitioner's claim is supported by several documents particularly the documents Exs.B2 and B4. Having regard to the tenor of the amendment that is sought by the revision petitioner, this Court is able to see that by amendment, a statement of fact that was found in the original plaint will go away.

3.The learned Counsel appearing for the respondents raised objection by referring to the two paragraphs which are found in the unamended plaint and the same paragraph which stand after amendment. It is seen that main dispute in this case is about the Rice Mill business in different names which can be resolved only at the time of trial. However, the petitioner cannot be permitted to withdraw



his statement that is made in the plaint. In such circumstances, this Court is of the view that the lower Court is right in dismissing the petition for amendment. However, the learned Counsel appearing for the revision petitioner submitted that the petitioner may be permitted to file an application for amendment to introduce a new paragraph, explaining the averments in paragraph 13 as it stands prior to amendment. Though the pleading now that is sought to be introduced by the revision petitioner is acceptable, the respondents should be given equal opportunity to defend in case such amendment is allowed to explain the statement that is already found in the plaint. In that view of the matter while dismissing the Civil Revision Petitions, this Court permit the petitioner/plaintiff to file appropriate application to introduce a separate paragraph explaining the statement that is found in paragraph 13 in the unamended plaint. The respondents shall be permitted to file an additional written statement in response to the amendment. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

The Additional District Munsif,
Karur.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-75608[F] dated 17/07/2019)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-75661[F] dated 17/07/2019)

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