



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.07.2019
(Reserved on 29.04.2019)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANUC.R.P (NPD) (MD) No.798 of 2011andM.P (MD) No.1 of 2011

C.Kanthasamy ... Defendant/Respondent/Petitioner
vs.
C.Raman ... Plaintiff/Appellant/Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.56 of 2010 in A.S.No.5 of 2010 against O.S.No.325/2004 dated 17.02.2011 on the file of the Sub Court, Kulithalai.

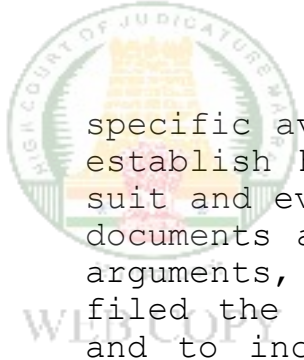
For Petitioner : Mr.T.Vadivelan
For Respondent : Mr.H.Lakshmi Shankar

ORDER

Against the order allowing the amendment petition, this revision is filed.

2.The facts of the case are that the respondent as plaintiff filed a suit in O.S.No.325/2004 against the petitioner/defendant for permanent injunction in respect of the pathway running through the petitioner's lands. The suit was dismissed, against which, the respondent filed an appeal in A.S.No.5/2010. After completion of the arguments, when the appeal was posted for judgment, the respondent filed the amendment petition to include the relief of declaration that the pathway in question is a common pathway and to include its boundaries. The Court below holding that the proposed amendment will be helpful for effective adjudication of the appeal, allowed the amendment petition subject to payment of cost of Rs.2,500/- to the petitioner herein/defendant, against which, the defendant has filed this revision.

3.Learned counsel for the petitioner/defendant would contend that the Trial Court has dismissed the suit holding that the plaintiff/respondent has not produced any documents to prove the existence of pathway and its boundaries have not been clearly mentioned. It is further contended that the revision petitioner/defendant has already averred in the written statement that the boundaries of the pathway were not mentioned and the respondent had not stated on what basis he claims right over the suit pathway. Even after the written statement with the above



specific averments, the respondent did not produce any documents to establish his rights, and therefore, the Trial Court dismissed the suit and even in the appeal, the respondent did not produce any such documents and having examined the witnesses and after completion of arguments, when the appeal was posted for judgment, the respondent filed the amendment petition to include the relief of declaration and to include the boundaries of the pathway which is absolutely changing the character of the suit, but the Court below without considering the same, erroneously allowed the amendment petition on terms. The Court below has completely lost sight of the fact that by virtue of the proposed amendment, a completely new case has been introduced and no due diligence has been shown by the respondent for filing such amendment. Thus, the learned counsel prays to set aside the impugned order. In support of his contention, learned counsel relied on a judgment in M.G.Kannan vs. V.Palaniammal reported in 2018 (1) MWN (Civil) 748.

4.Per contra, learned counsel for the respondent/plaintiff would contend that the proposed amendment is only an answer to the questions posed by the Trial Court regarding the description of suit property and it is not the case of the petitioner that the proposed description of boundaries to suit property is completely a some other property and therefore, there is no change in the character of the suit nor there is no introduction of new case. Even this Court in 2006 (1) LW 153, has held that amendment seeking the relief of declaration on the strength of the pleadings already there cannot be said to be changing the cause of action and therefore, such amendment can be allowed. Even the Hon'ble Supreme Court in V.Jeyalakshmi vs. Kasi Rajan CRP.2446/2012, has allowed the amendment petition filed in a permanent injunction suit by converting the same as the suit for declaration and possession even after a passage of 11 years. Therefore, the learned counsel would contend that the appellate Court finding that the character of the suit is not changed by virtue of the proposed amendment but it will be helpful for effective adjudication of the appeal, allowed the amendment petition which does not require any interference by this Court. In support of his contention, the learned counsel relied on various decisions.

5.Heard both sides and perused the records.

6.Perusal of record shows that the respondent/plaintiff filed a suit for permanent injunction against the petitioner/defendant in respect of the pathway and the Trial Court dismissed the suit, holding that the plaintiff did not produce any documents to establish his case and boundaries of the suit property were not clearly mentioned. As against the dismissal of the suit, the respondent filed appeal. In the appeal, arguments were completed and it was posted for judgment. At that time, the respondent filed the present amendment petitions to re-open the case and to include the prayer of declaration to declare that B schedule property is the common cart-track cum pathway and also to mention four boundaries to



the suit property. The appellate court observed that only additional information and additional relief sought to be added and to resolve the question raised in the matter that whether the respondent/plaintiff has right over the suit property, it is necessary to allow the amendment petition. Considering various decisions and Order 6 Rule 17 CPC, which states that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a 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 of controversy between the parties, the appellate Court allowed the amendment petition holding that the amendment will not change the character of the suit.

7. Perusal of record shows that the appellate Court has failed to note the proviso to Order 6 Rule 17 CPC, which states 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. In the present case, there is no pleading on the part of the respondent that in spite of due diligence he could not have filed amendment petition before the commencement of trial. The appellate Court ignoring this vital factor has mechanically allowed the amendment petition which is highly arbitrary and it will greatly prejudice the petitioner. There is no pleading at all as to the due diligence shown by the respondent and despite of which he was not able to claim the relief of declaration. By including the prayer of declaration, the nature and character of the suit is changed. Also, the petitioner/defendant in the written statement itself has stated that the respondent/plaintiff has not mentioned the four boundaries of the suit property and on what basis he claims right over the suit property. But, in spite of that, the respondent has not amended the plaint and after the dismissal of the suit and at the appellate stage that too when the appeal was posted for pronouncing judgment, the respondent filed the amendment petition. Therefore, in my considered opinion, the attitude of the respondent in filing the amendment petition is only to prolong the proceedings and hence, the impugned order requires interference at the hands of this Court.

8. Accordingly, the order dated 17.02.2011 passed in I.A.No.56 of 2010 in A.S.No.5 of 2010 against O.S.No.325/2004 on the file of the Sub Court, Kulithalai, is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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To

The Sub Judge,
Kulithalai.

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+1 CC to Mr.H.LAKSHMI SHANKAR, Advocate (SR-78744[F] dated 31/07/2019)

+1 CC to Mr.T.VADIVELAN, Advocate (SR-79010[F] dated 31/07/2019)

C.R.P (NPD) (MD) No.798 of 2011
30.07.2019

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