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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.01.2019

DELIEVRED ON : 23.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.104 of 2019 (PD)

and

C.M.P. (MD) .No.514 of 2019

Rengasamy .. Petitioner /Petitioner/ Plaintiff

Vs.

1.Balaguru

2.Savithri ... Respondents/Respondents / Defendants

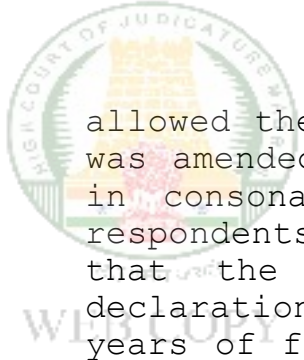
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 25.09.2018, passed in I.A.No.185 of 2018 in O.S.No.6 of 2010 by the District Munsif, Virudhunagar.

For Petitioner : Mr.G.Mariappan
For respondents : Mr.G.Aravinthan

ORDER

This civil revision petition has been filed by the petitioner/plaintiff challenging the order, dated 25.09.2018, passed in I.A.No.185 of 2018 in O.S.No.6 of 2010, whereby and whereunder the petition filed by the petitioner seeking to amend the plaint in the Court fee portion is dismissed.

2.The petitioner / plaintiff has filed the suit for permanent injunction against the respondents / defendants. The respondents/ defendants made counter claim by seeking the relief of declaration that the eastern side wall of the property is common wall and consequential permanent injunction restraining the petitioner/plaintiff from altering the same. Pursuant to the counter claim made by the respondents / defendants, the petitioner / plaintiff filed an amendment petition seeking to add the relief of declaration in the plaint. The trial Court dismissed the said petition, against which the petitioners filed C.R.P. (MD).No.1839 of 2011 before this Court. This Court, by order dated 14.03.2013,



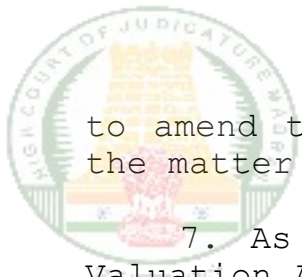
allowed the amendment petition. Pursuant to that order, the plaint was amended. But, the Court fee portion was omitted to be amended in consonance with the amendment relating to the relief. The respondents/defendants filed an additional written statement stating that the petitioner/plaintiff is not entitled to relief of declaration as he has not paid proper Court fee. After about four years of filing of the said additional written statement and after hearing both sides, when the matter posted for judgment, the petitioner/plaintiff filed I.A.No.185 of 2018 seeking to amend the plaint in the Court fee portion. The Court below dismissed the said petition holding that the petitioner has not shown that he could not file the amendment petition earlier inspite of his due diligence. Aggrieved by the said order, the petitioner is before this Court.

3.The learned counsel for the petitioner/plaintiff submitted that after permitting the petitioner/plaintiff to add the relief of declaration by way of amendment as per the order passed by this Court in C.R.P.(MD).No.1839 of 2011, the Court below ought to have directed the petitioner to pay necessary Court fee for such relief and that as per Section 12 of the Tamil Nadu Court Fees and Suits Valuation Act, the Court is also equally responsible in the matter of collecting Court fees. The Court below has failed to do so. He would further submit that having permitted the petitioner to go ahead with the trial and to canvass for the relief of declaration, the Court below ought not to have dismissed the amendment petition. Thus, he prayed to allow this petition.

4. The learned counsel for the respondents/defendants submitted that though the respondents/defendants specifically stated in the additional written statement that the petitioner is not eligible to get declaratory relief, in view of the non payment of proper Court fee also, the petitioner did not take any steps to file amendment petition immediately. After the matter posted for judgment, the petitioner has filed the amendment petition belatedly with the intention to drag on the proceedings. The petitioner has not shown that inspite of his due diligence, he could not file the amendment petition. Therefore, the Court below rightly dismissed the petition and the same need not be interfered with. Thus, he prayed for dismissal of this petition.

5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. Under Order 6 Rule 17 of C.P.C., an amendment petition can be filed at any stage of the proceedings. However, if an amendment petition is filed after the commencement of trial, the party who seeks amendment should show that he could not file the amendment petition earlier to the commencement of the trial, inspite of his due diligence and the Court may allow such amendment petition on such terms, as may be necessary for the purpose of determining the real questions in controversy between the parties. Admittedly, in this case, the petitioner has filed the amendment petition seeking



to amend the valuation of Court fee mentioned in the plaint, when the matter posted for judgment after hearing both sides.

7. As per Section 12 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, the defendants are entitled to raise objections in regard to the payment of Court Fee by the Plaintiff either through their Written Statement or by way of filing an application before evidence is taken in the main suit. If such objection raised, then all questions arising out of such plea shall be heard and decided before evidence is recorded, affecting such defendants, on the merits of the claim. If the Court comes to the conclusion that the suit has either not been valued properly or that the Court fee paid is insufficient, then the Court ought to have fixed a date within which time the plaintiff rectifies such defects and despite such time being granted, the plaintiff fails to pay the deficit court fee or amend the plaint, the plaint shall be rejected in respect of the relief against which the fee not paid.

8. Admittedly, in this case, the Court below permitted the petitioner/plaintiff to amend the plaint for additional relief of declaration. Before making such amendment, the Court below ought to have issued check slip to the petitioner to pay the deficit Court fee for adding such relief. It appears that the Court below has not issued such slip, but permitted the petitioner/ plaintiff to add the relief of declaration. Though the respondents / defendants raised a plea through their additional written statement that the petitioner/plaintiff has not paid proper Court fee, they did not urge the Court to decide the said issue before evidence is recorded. The Court below also permitted the petitioner / plaintiff to go ahead with the trial and to canvass the relief of declaration. It is seen that the respondents/ defendants raised the said plea again during the course of evidence and also in the arguments. Even thereafter, the Court below did not direct the petitioner/plaintiff to pay the deficit Court fee by issuing check slip. The petitioner/plaintiff also kept silent.

9. In a Court proceedings, each and every litigant, who approaches the Court seeking justice, should be fair to the Court. Likewise, the Advocates / Counsels, who are appearing on behalf of parties, being Officers of the Court, also should be fair enough to assist the Court to deliver substantive justice. The Court in turn also should be vigilant and attentive to the facts of the case presented before it. In this case, the petitioner / plaintiff, without keeping silent till the issuance of check slip by the Court, could have filed a proper petition seeking permission of the Court to pay the necessary Court fees for the amended relief. But, he has failed to do so. As stated earlier, there is also no record to show that immediately after the amendment was ordered by the High Court, the trial Court has issued a check slip directing the petitioner / plaintiff to pay the Court fee relating to the amended prayer. If the petitioner/plaintiff is not permitted to amend the plaint, after paying the necessary Court fee, in consonance with the earlier



amendment, the real issue in controversy between the parties will not be decided and the purpose of earlier amendment would be defeated. Taking into consideration of all these circumstances, this Court feels that ends of justice would be met, if this petition is allowed imposing a cost of Rs.2,000/- to the petitioner/plaintiff.

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10. In the result, this Civil Revision Petition is allowed and the order passed by the Court below is set aside and the amendment petition filed in I.A.No.185 of 2018 by the petitioner/plaintiff is allowed subject to the payment of necessary Court fee and cost of Rs.2,000/- to the respondents/defendants within a period of two weeks from the date of receipt of a copy of this order, failing which this petition shall stand dismissed automatically without any further reference to this Court. Considering the year of the suit, the Court below is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the Court below for the early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar(CS)

To

1.The District Munsif,
Virudhunagar District.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.G.MARIAPPAN, Advocate (SR-61733[F] dated 23/04/2019)

+1 CC to M/s.G.ARAVINTHAN, Advocate (SR-61675[F] dated 23/04/2019)

C.R.P(MD)No.104 of 2019 (PD)
23.04.2019

SP/02/05/2019/4P/6C