



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP(MD) No.384 of 2019

and

C.M.P. (MD) No.1916 of 2019

1.Gangadharan Nair

2.Lekha

... Petitioners/Petitioner/defendants

vs.

Mohan Dhas

... Respondent/Respondent/Plaintiff

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to set aside the order dated 10.12.2018 passed in I.A.No.369 of 2018 in O.S.No.262 of 2015 on the file of the I Additional District Munsif, Kuzhithurai.

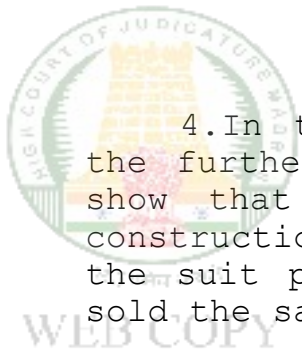
For Petitioners : M/s.J.Anandhavalli

ORDER

This civil revision petition has been filed to set aside the order dated 10.12.2018 passed in I.A.No.369 of 2018 in O.S.No.262 of 2015 on the file of the I Additional District Munsif, Kuzhithurai.

2.The petitioners, who are the defendants, filed I.A.No.369 of 2018 seeking for removal of the word "consent and" from the statement filed by them by way of an amendment. The petitioners in the affidavit contended that the plaintiff has filed a suit in O.S.No.260 of 2015 in the year 2015 and the petitioners herein also filed their written statement on 06.04.2016. In para 4 of the written statement particularly in the third line, the following words "consent and" were wrongly typed due to inadvertent and it is only a typographical error crept in the statement and hence, the petitioners sought for removal of the said words by way of amendment.

3.After observing the contentions raised by the petitioners seeking removal of the said word and also the relief sought by the plaintiff/respondent herein, the trial Court has passed an order that if the amendment sought for is permitted, the other side will be put to prejudice and dismissed the said petition.



4. In the grounds of revision, the petitioners contended that the further amendments made in the written statement will clearly show that the petitioners' pleading is that they had put up construction to the knowledge of the Paulraj, the original owner of the suit property and he has left that constructed area while he sold the same to Chellappan and given up his right in the property.

5. The other contention raised in the grounds of revision is that the sale deed in favour of Chellappan by Paulraj did not convey an extent of 2 1/2 cents and that is in possession of these defendants by putting up construction in the same and that plea of alleged trespass of the plaintiff's property against these petitioners is totally false. Further, it is contended by the petitioners that the construction was there even in 1977 and the defence was not that the consent was obtained from Paulraj and if that is so, the plea of the plaintiff that the petitioners have trespassed in August 2015 would not have been there and therefore, the amendment application ought to have been allowed.

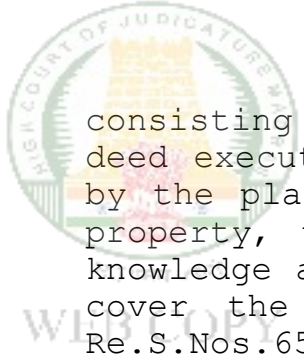
6. Further it is contended that a right has accrued on the respondent in view of the admission of the petitioners and therefore, the dismissal of the said application is erroneous. Unless the respondent establish the alleged trespass, he is not entitled to the decree as sought for by him and hence, the amendment has to be allowed and the said amendment will not take away any right on the respondent.

7. The trial Court contended that it is categorically pleaded in paragraph 4 of the written statement that when the Paulraj was in possession of 23 1/2 cents, these defendants with his consent and knowledge put up the building in Re.S.Nos.654/7 and 654/9 having an extent of 2.500 cents. Now, the contention of the petitioners is that the word "consent and" are inadvertently typed in the written statement and the trial Court also found that when the suit was filed for recovery of possession, the petitioners all along contested the suit that they had put up building with the "consent and" knowledge of Paulraj and further, when the suit was posted for defendants side evidence, the relief sought by the petitioners by way of amendment if granted will definitely affect the case.

8. Further, the trial Court found that admission is a good piece of evidence and therefore, the parties cannot be permitted to withdraw their admission made in the pleadings. If the amendment sought for is permitted, the other side will be put to prejudice and after considering all these facts, the trial Court dismissed the said petition.

9. Heard the arguments advanced by the learned counsel for the petitioners and perused the records carefully.

10. The petitioners contended that only with the knowledge of the plaintiff, he has put up a construction and the said area is



consisting of 2 1/2 cents and the same is not mentioned in the sale deed executed by Paulraj in favour of Chellappan. It is contended by the plaintiff that the defendants made construction in the said property, which belonged to Paulraj and thereby, he may not have knowledge and hence, the sale deed in favour of Chellappan does not cover the area, in which, the defendants made construction in Re.S.Nos.654/7 and 654/9. Hence, the removal of the said word "consent and" will not affect the case on either side.

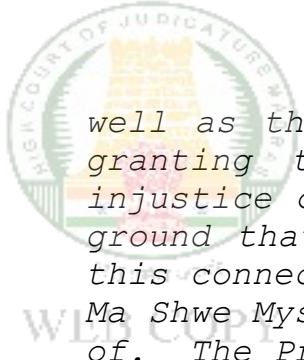
11.The learned counsel for the petitioners quoted the judgment of the Hon'ble Supreme Court in the case of **Panchdeo Narain Srivastava Vs. KM. Jyoti Sahay and another** reported in **1984 (supp) Supreme Court Cases 594** and regarding this case, the relevant portion of the said judgment is as follows:

3.Even if the High Court was justified in holding that the deletion of the word 'Uterine' has some significance and may work in favour of either side to a very great extent yet that itself would not provide any justification for rejecting the amendment in exercise of its revisional jurisdiction. We may, in this connection, refer to Ganesh Trading Co. V. Moji Ram, wherein, this Court after a review of number of decisions speaking through Beg, C.J. observed that procedural law is intended to facilitate and not to obstruct the course of substantive justice. But the learned counsel for the respondents contended that by the device of amendment a very important admission is being withdrawn. An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn. The learned trial Judge, granting the application for amendment was satisfied that in order to effectively adjudicate upon the dispute between the parties, amendment of the pleading was necessary. The High Court in its revisional jurisdiction for a reason which is untenable ought not to have interfered with the order made by the trial Court. The learned counsel for the respondents in this connection read one unreported decision of this Court in which this Court upheld the decision of the High Court setting aside the order granting amendment in exercise of its revisional jurisdiction. We have gone through the judgment. The decision does not lay down any particular principle of law and appears to be a decision of its own facts. And accordingly, it is well settled that unless there is an error in exercise of jurisdiction by the trial Court, the High Court would not interfere with the order in exercise of its revisional jurisdiction.

12.Further, the learned counsel for the petitioners quoted the another judgment of the Hon'ble Supreme Court in the case of **Supreme Court Bar Association Vs. Union of India and others** reported in **2007 Supreme Court 1670** and regarding this case, the relevant portion of the said judgment is as follows:

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17.It is now well settled by various decisions of this Court as



well as those by High Courts that the Courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. In this connection, the observation of the Privy Council in the case of *Ma Shwe Mys v. Maung Mo Hnaung* (AIR 1922 P.C. 249) may be taken note of. The Privy Council observed:

"All rules of Courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject matter of the suit."

13.Regarding the quoted judgments this Court finds that the Courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one.

14.In this case, the amendment sought by the petitioners herein is to remove the word "consent and". The reliefs sought by the plaintiff are for declaring the plaintiff's title over 'B' schedule property, recovery of possession and permanent injunction restraining the defendants from trespassing and entering the plaintiff 'A' schedule property. It is observed from the proceedings of the trial Court that now the case is posted for the defendants' side evidence and when the petitioners say that with the knowledge of the plaintiff, they have made construction and the sale deed in favour of Chellappan does not contain the property, in which, the defendants made construction and hence there will not be any prejudice caused to the plaintiff, cannot be a reasonable one.

15.From the arguments advanced by the learned counsel for the petitioners, it is seen that the amendment sought by them if granted, the same will definitely affect the case on either side and when the plaintiff contended that the defendants have trespassed into the north eastern portion of the plaintiff, 'A' schedule property and in the 'B' schedule property, the word "consent and" will make so large of meaning and that therefore, there cannot be any amendment petition at a very belated stage. Hence, it is for the petitioners to prove their case since the case was posted for defendants side evidence.

16.In view of the above, the order dated 10.12.2018 passed in I.A.No.369 of 2018 in O.S.No.262 of 2015 on the file of the I Additional District Munsif, Kuzhithurai does not require any interference of this Court and there is no merit in this Civil Revision Petition.



17. This Civil Revision Petition is dismissed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar

To

The I Additional District Munsif,
Kuzhithurai.

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-49833)

kk/02.04.2019/5p/3c

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