



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

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CRP(MD).No.2712 of 2018(PD)
and
C.M.P.(MD).No.11883 of 2018

Perumal

... Petitioner/Petitioner/Plaintiff

Vs.

1. Marudaiyappan

Perumal (Died)

2. Kaliammal

3. Selvaraj

4. Minor Mariammal

(Represented by mother and guardian
Kaliammal)

... Respondents/Respondents
/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 26.09.2018 in I.A.No.766 of 2018 in O.S.No.239 of 2010 on the file of the District Munsif Court, Kulithalai.

For Petitioner : Mr.K.Govindarajan

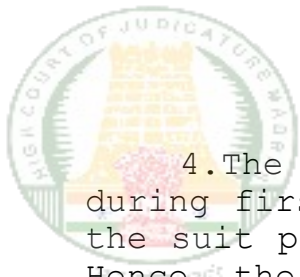
For R1 to R4 : Mr.N.Sudhagar Nagaraj

ORDER

This Civil Revision Petition has been preferred against the fair and decreetal order dated 26.09.2018 in I.A.No.766 of 2018 in O.S.No.239 of 2010 on the file of the District Munsif Court, Kulithalai.

2.The revision petitioner herein, who is the plaintiff has filed an I.A., under Order 6 Rule 17 r/w Section 151 of C.P.C., for recovery of possession and to amend the plaint.

3.In the said I.A., the plaintiff has stated that he filed the suit for permanent injunction in respect of Survey No.123/45 and now, the suit property is in possession and enjoyment of the plaintiff. It is further stated that already an Advocate Commissioner was appointed to inspect the suit property and after completion of inspection, he has filed his report. Already the said suit was dismissed for non appearance of the plaintiff and



4.The contention raised by the plaintiff in the I.A is that during first week of July 2011, the defendants made construction in the suit property taking advantage of the absence of the plaintiff. Hence, the plaintiff seeks to demolish the construction made by the defendants and the plaint has to be amended for the relief of Mandatory Injunction and also for possession of the suit property. Therefore, the plaintiff sought for amendment with regard to the relief of mandatory injunction and for delivery of possession.

5.The respondents/defendants has filed their counter statement stating that filing of I.A has totally changed the cause of action itself and no document has been filed by the plaintiff for the relief of mandatory injunction. As the trial has been commenced, the present I.A filed by the petitioner/plaintiff belatedly. When the Advocate Commissioner has filed his report as early as in the year 2011 itself, the filing of the present I.A by the petitioner in the year 2018 belatedly is not a genuine one.

6.The trial Court after observing the contentions raised by both sides and considering the fact that when the defendants made construction during the year 2011, the plaintiff has filed a petition to remove and demolish the said construction and after 7 years the said I.A has been filed to amend the plaint, which is barred by limitation, as it is filed beyond three years and only with an intention to drag on the proceedings, the plaintiff has filed the present I.A., dismissed the same.

7.Aggrieved against the said order, the present Civil Revision Petition has been filed by stating that the reasons stated by the trial Court is not a fair one and the limitation is a question of law and it has to be decided only by way of trial. When there is an encroachment made by the defendant by way of making construction in the suit property, the relief sought by the plaintiff by way of amendment is very much essential. Therefore, the dismissal of the said application does not a fair and perfect order.

8.The learned counsel appearing for the respondent has relied upon the order of this Court in the case of **S.AHAMED MEERAN VS. S.KUMARASWAMY** reported in **2006(1)CTC 55**, wherein it is held that no application for amendment can be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. The relevant portions are extracted hereunder:

"19.Order 6, Rule 17, C.P.C., has been amended by the C.P.C., Amendment Act with effect from 1.7.2002. A new proviso has been added to the rule, namely that no application for amendment of the pleadings shall be allowed after the trial has commenced, unless the Court come to the conclusion that inspite of due diligence, the party could not have raised the matter before the



commencement of Trial. In Kasiappa Gounder, S/o.Manthiriappa Gounder, Periya Thadagam, Verapandi, Coimbatore Taluk, 2005(3) CTC 412 and P.Subba Naicker v. Veluchamy Naicker and three others, 2004 (1) CTC 742, this Court has held that after the Trial of the case, no application for Amendment of the pleadings shall be allowed. In the decision Rethinam alias Anna Samuthiram Ammal Vs. Syed Abdul Rahim, 2005(3) CTC 321, P.K.Misra, J. referring to Section 16 of the Code of Civil Procedure (Amendment) Act 2002, held that in respect of the Plaint or Written Statement filed before 1.7.2002, the Proviso to Order 6, Rule 17, C.P.C would have no applicability. In the said decision, the learned Judge has held:

"6.Section 16 of the Code of Civil Procedure (Amendment) Act, 2002, contains provisions relating to Repeal and Savings. Provision under Section 16, so far as relevant for the present purpose, is as follows:

"16.Repeal and Savings._(1).....

(2).....

(a)

(b)the, provisions of Rules 5, 15, 17 and 18 of Order 6 of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act;

(c).....

The aforesaid provision makes it clear that the provisions of Order 6, Rule 17, which had been omitted by Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and which had been inserted by Section 7 of the Code of Civil Procedure (Amendment) Act, 2002 shall not apply to in respect of any pleadings filed before the commencement, of Section 16 of the Code of Civil Procedure (Amendment) Act 1999 and Section 7 of the Code of Civil Procedure (Amendment) Act 2002. As already indicated, the Code of Civil Procedure (Amendment) Act 1999 and the Code of Civil Procedure (Amendment) Act 2002 came into force with effect from 1.7.2002. From the bare reading of the provisions contained in Section 16(2) (b) of the Code of Civil Procedure (Amendment) Act, 2002, it is clear that such amended provision as contained in proviso shall not apply to in respect of any pleadings filed before the commencement of the amended Code. Pleadings in this context obviously include the Plaint and Written Statement.



12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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sd/
Assistant Registrar(crl. side)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif Court,
Kulithalai.
2. The Record Keeper, V.R.Section(2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.SUDAGAR NAGARAJ, Advocate (SR-55497[F] dated
20/03/2019)

+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-55810[F] dated
21/03/2019)

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