



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.09.2019

DELIVERED ON :28.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No. 806 of 2014

and

M.P. (MD) No. 1 of 2014

K.Subramania Pillai .. Petitioner/Plaintiff/Petitioner
Vs.

1.Kavitha

2.Krishna Pillai

3.Radhakrishnan .. Respondents/Defendants/
Respondents

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 06.03.2014 in I.A.No.788 of 2012 in O.S.No.113 of 2012 on the file of the Court of the learned Subordinate Judge, Padmanabhapuram, allowing the said I.A.

For Petitioner : Mr.K.N.Thampi

For Respondents : Mr.H.Thayumanasamy

ORDER

Heard the learned counsel on either side.

2.This Civil Revision Petition has been filed to quash the order dated 06.03.2014 made in I.A.No.788/2012 in O.S.No.1381/2012 before the same Judge, Padmanapuram.

3. The revision petitioner is the plaintiff in the suit. The respondents are the defendants in the suit. The petitioner filed a suit in O.S.No.113 of 2012 before the learned Subordinate Judge, Padmanabhapuram for declaration of title and for possession and for consequential injunction restraining the defendants from causing interference with petitioner's peaceful possession over the schedule property. During the pendency of the suit, the petitioner filed a petition in I.A.No.788/2012 before the Court below under Order 6 Rule 17 for permission to amend the plaint and the same was dismissed by the Trial Court. Against which, the petitioner preferred this Civil Revision Petition.



4. The Substance of the petition filed by the petitioner before the Trial Court is as follows:-

The petitioner has filed a suit for declaration of title and for possession and for consequential injunction order. In the suit, the petitioner filed a petition in I.A.No.243/2012 for a relief of interim injunction and notice was ordered on 12.04.2012 and the said application was adjourned to 06.06.2012. While so, on 13.04.2012, the defendants with rowdy elements entered into the suit property and constructed a building, roofed with asbestos sheet and took over the possession of about 1.556 cents along the western portion of the 'A' schedule property, which is described as 'B' schedule property and the construction has to be demolished by an order of mandatory injunction and hence, due to subsequent event, the suit prayer has to be amended for recovery of possession and for mandatory injunction.

5. The Substance of the counter filed by the respondents/defendant is as follows:-

In the plaint, the petitioner / plaintiff alleged that his mother Bagavathiammai purchased the property on 15.11.1973, as per the document in S.No.1753/1973. But, in the injunction application, survey No.1738/73 was mentioned. However, the plaintiff has not produced both the documents along with the plaint. The settlement deed executed by the father of the plaintiff and the Will said to have been executed by one Bagavathiammal in favour of her husband, were forged documents. The survey number stated in the plaint did not correlate with the respondent's property. The construction in the suit property was made long prior to the filing of the suit, after obtaining necessary approval from the local panchayat. The first defendant after purchasing the suit property, from the second defendant is in possession and enjoyment of the property for more than 50 years. The proposed amendment would alter the nature of the suit as well as the cause of action. Under the guise of amendment, the plaintiff is substituting a new plaint which is not permissible under the law.

6. The Trial Court after hearing both side arguments, dismissed the petition on the ground that the petitioner/plaintiff has not produced any documents to prove the encroachment by the defendants and came to the conclusion that allowing the amendment would change the entire nature of the suit. Against which, the petitioner preferred this present petition.

7. On the side of the Revision Petitioner, it is stated that the respondent has not filed his written statement and the amendment sought for is only due to subsequent events. Even, if there is any question of limitation due to the amendment of the prayer, such amendment also can be allowed. The learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in



and other reported in **AIR 1974 SC 1178**. The relevant paragraphs in the above judgment are as follows:-

" 11..... Ordinarily, a suit is tried in all its, stages on the cause of action as it existed on the date of its institution. But it is open to a Court including a Court of appeal to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate; or (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation.

12.... Even if the assertions made in the application for amendment of the written statement are found to be true, the appellant could not have non-suited the respondent during her lifetime of Smt.Rajrani. The gift was valid during her lifetime. Her death gives a fresh cause of action to the appellant who claims to be her next reversioner. It appears to us that it will be just and proper to allow the amendment sought for. It will shorten litigation."

8.The petitioner relied upon another judgment of the Hon'ble Supreme Court in the case **Ragu Thilak D John Vs S.Rayappan and others** reported in **AIR 2001 SC 699**. The relevant paragraphs in the above judgment are as follows:-

" 3.... During the pendency of the suit, the respondents-defendants were alleged to have entered the appellant's house un-authorisedly and demolished the compound wall on north, east and western side. They were alsoalleged tohave damaged the gate in the entrance.

6.... We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for."

9.The petitioner relied upon another judgment of the Hon'ble Supreme Court in the case **A.B.T Parcel Service Vs. C.R.Vasudevan** reported in **1995 1 MLJ 129**. The relevant paragraphs in the above judgment are as follows:-

" 7. ... Ordinarily, a suit is tried in all its stages on the cause of action as it existed on the date



of its institution. But, it is open to a court (including a court of appeal) to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally had (1) by reason of subsequent change of circumstances become inappropriate, or (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation, or (3) to do complete justice between the parties.

8. by reason of subsequent change of circumstances in order to shorten the litigation or to do complete justice between the parties. The above principle laid down by the Supreme Court squarely applies to the facts of the case on hand."

10. On the side of the petitioner / Plaintiff, it is further stated that when written statement was not yet filed by the respondent, there is no necessity for the Trial Court to dismiss the amendment petition. To decide the real question involved in the case of the petition under, Order 6 Rule 17 of CPC is necessary. Even before the filing of the written statement, the Trial Court made an observation that the case of the plaintiff did not seem to be true. Since the construction was not made by the petitioner, the petitioner could not produce any document to show the construction and that no prejudice will be caused to the respondents in allowing this petition.

11. On the side of the petitioner, the following judgments are cited:-

1) **Ragu Thilak D John Vs S.Rayappan and others** reported in **AIR 2001 SC 699.**

2) **Ganapathy and others Vs. Kandasamy and others** reported in 2007 (4) CTC 648.

3) **Nair Society Ltd., Vs. K.C.Alexander and others** reported in **AIR 1998 SC 1165.**

4) **Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and other** reported in **AIR 1974 SC 1178.**

5) **A.B.T Parcel Service Vs. C.R.Vasudevan** reported in 1995 1 MLJ 129.

12. On the side of the respondents/defendants, it is stated that the petitioner filed a suit in O.S.No.113 of 2012 on 13.04.2012 and he filed a petition for amendment only on 27.11.2012. After lapse of seven months, the petition for amendment I.A.No.788 of 2012 was filed. At the time of filing, the petitioner has not produced any photograph of the construction. Even in the Interlocutory Application, the petitioner admitted that he has documents only for 9 cents and he is in possession and enjoyment of an extent of 9.5



cents. There was no document to prove that a police complaint was lodged. The construction in the suit property was done in the property of the respondents / defendants and the petitioner / plaintiff has no right to restrain the defendants from enjoying their property. The construction of the shed is done only after obtaining planning approval from the panchayat and that the citations filed by the petitioner are not applicable to the present situation of the case. As the petitioner filed an amendment petition, after a lapse of 7 months there is no necessity to take a different stand.

13. From a perusal of the available materials, it is seen that the order passed in I.A.788 of 2012 is based on the following grounds:-

- 1) The petition was filed after a lapse of 7 months.
- 2) The petitioner has not produced any documents regarding the construction.
- 3) The amendment will alter the nature of the suit.

14. It is seen that the prayer sought for by the petitioner / plaintiff is for declaration of title and for possession and for an interim injunction. In the amendment petition, the petitioner wants to include another prayer that is for recovery of possession of suit property and for mandatory injunction regarding 'B' schedule property. 'B' schedule property with an extent 1.556 cents is situated on the northern side within the 'A' schedule property. The prayer sought for in the amendment petition is not barred by limitation and hence the lapse of 7 months from the date of encroachment will not affect the case of the defendants.

15. The next point considered by the Trial Court is that the plaintiff did not produce any documents. Photograph will not be sufficient to fix the date of construction and there is no possibility for the plaintiff to get any other documents regarding the construction made by the defendant. The construction of the shed is not denied by the respondents/defendants. The only claim of the respondents / defendants is that the construction of the shed was done only after obtaining the plan approval from the panchayat. But, no such plan approval was filed by the defendants. In the above circumstances, this point cannot be decided against the plaintiff.

16. The Trial Court failed to consider how the amendment will change the entire cause of action or alter the nature of the case. The plaintiff claim the amendment necessary due to the subsequent events. As written statements was not filed, case of the defendant will not be affected.



17. Considering the above facts and circumstances, this Court is inclined to give an opportunity to the petitioner / plaintiff to put forth his plea. Hence, this Civil Revision Petition is allowed and the order passed in I.A.No.788 of 2012 in O.S.No.113 of 2012 on the file of the Court of the learned Subordinate Judge, Padmanabhapuram, is hereby set aside. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

dss

To

The learned Subordinate Judge,
Padmanabhapuram.

+1 CC to M/s.H. THAYUMANASWAMY, Advocate (SR-102181[F] dated
28/11/2019)

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