



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CRP(PD) (MD)No.99 of 2015

and

CMP(MD)No.8729 of 2019

Veludass

... Petitioner/Petitioner/Plaintiff

versus

1. Nesammal
2. Vincent
3. Singh
4. Sarala
5. Litra
6. John
7. Rajesh
8. Pappa

... Respondents/ Respondents/Defendants

Revision Petition filed under Article 227 of Constitution of India, against the order dated 07.10.2014 passed in I.A.No.571 of 2014 in O.S.No.436 of 2010 on the file of the First Additional District Munsif, Kuzhithurai.

For Petitioner : M/s.J.Anandhavalli

For Respondents : Mr.K.Sreekumaran Nair for R1, R4 and R5

No appearance for others

ORDER

The Revision Petitioner herein is the plaintiff in O.S.No.436 of 2010 on the file of District Munsif Court, Kushithurai. The respondents herein are the defendants in the said suit.

2. The Civil Revision Petition has been filed by the revision petitioner, challenging the order, dated 07.10.2014, passed in I.A.No.571 of 2014 in O.S.No.436 of 2010 by the First Additional District Munsif, Kuzhithurai.

3. Originally, the suit in O.S.No.436 of 2010 has been filed by the revision petitioner seeking to grant a decree of injunction restraining the defendants from interfering with his peaceful possession over the suit property or from putting any boundaries or structures in the suit property and also for damages. The defendants 1 and 5 filed their written statement in the said suit.



4. During the pendency of the suit, the revision petitioner has also filed an application in I.A.No.571 of 2014 in O.S.No.436 of 2010 before the First Additional District Munsif, Kuzhithurai, seeking the following amendment in the plaint:

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1. Add the following along with para No.13 of the plaint: "On 30.08.2010, the defendants trespassed into the suit property, after demolishing the buildings of the plaintiff at mid-night"

2. Add the following in the Court fee column as "the suit is valued at Rs.30/- being the market value of plaint schedule property and a court fee of Rs.2250/- paise 50 is paid under Section 25(a) of Tamil Nadu Court Fees and Suit Valuation Act"

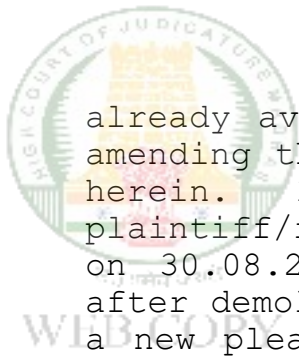
3. Add the following as Relief A1 after Relief-A, "The title and possession of the plaintiff over the suit property may be declared and the plaintiff may be given a decree for recovery of the same with future mesne profits from the date of suit till realization".

However, the Court below dismissed the said application stating that the same averments is already available in the plaint. Challenging the said order, the present Civil Revision Petition has been filed.

5. The learned counsel appearing for the the revision petitioner contended that no doubt, there is a building in the suit schedule property and the respondents attempt to trespass the building, are clearly depicted in the plaint averments. However, the suit was filed for permanent injunction and he has not prayed anything for declaration of title and possession. Therefore, the application has been filed seeking amendment of plaint by adding the prayer for declaration of title and possession of the suit schedule property.

5.1. The revision petitioner further contended that by adding the prayer, the plaintiff/revision petitioner is not going to introduce new averments in the plaint. Therefore, there is no impediment for the Court below to allow this application. But, the Court below, without considering these aspects, simply rejected the application stating that whatsoever the revision petitioner wants to amend is already available in the plaint. The Court below has also not considered the need for amendment to add the prayer for declaration of title and possession.

6. The learned counsel appearing for the respondents contended that the averment made in the amendment petition to add in para-13, i.e. on 30.08.2010, the defendants trespassed into the suit property and demolished the buildings of the plaintiff at mid-night, is



already available in the plaint. Therefore, there is no need for amending the plaint in para 13 as sought by the revision petitioner herein. However, the learned counsel fairly submitted that the plaintiff/revision petitioner, by adding para-13 in the plaint that on 30.08.2010, the defendants trespassed into the suit property, after demolishing the buildings of the plaintiff, is not introducing a new plea or new cause of action. But, with regard to the delay only, the present amendment application was dismissed by Court below.

7. Heard both sides.

8. Admittedly, by virtue of new amendment, the revision petitioner is not going to introduce a new plea or new cause of action and not to change the pleadings in the plaint. So, only based on the pleadings already available in the plaint, the revision petitioner herein is seeking to add the following paras in the plaint.

"1. Add the following along with para No.13 of the plaint: "On 30.08.2010, the defendants trespassed into the suit property, after demolishing the buildings of the plaintiff at mid-night"

2. Add the following in the Court fee column as "the suit is valued at Rs.30/- being the market value of plaint schedule property and a court fee of Rs.2250/- paise 50 is paid under Section 25(a) of Tamil Nadu Court Fees and Suit Valuation Act"

3. Add the following as Relief A1 after Relief-A, "The title and possession of the plaintiff over the suit property may be declared and the plaintiff may be given a decree for recovery of the same with future mesne profits from the date of suit till realization"."

By adding this new prayer, it cannot be said that the revision petitioner is introducing a new plea or new cause of action and changing old pleadings. Therefore, there is no impediment for the Court below to allow the amendment application. But, on the other hand, the Court below, without applying its mind, mainly on the basis of the delay in filing the amendment petition, has rejected the application.

9. For the purpose of rendering substantial justice and to give fair opportunity to the revision petitioner for adjudication in the present matter, this Court is of the view that it is just and necessary to allow the amendment application. Accordingly, the order passed by the Court below is set aside and the civil Revision



Petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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// True Copy //

Sub Assistant Registrar(CS)

To

1. The First Additional District Munsif,
Kuzhithurai.

+1 CC to Mr.K.SREEKUMARAN NAIR, Advocate (SR-92245[F] dated
16/10/2019)

+1 CC to M/s.J.ANANADHAVALLI, Advocate (SR-92350[F] dated
17/10/2019)

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