

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(PD).No.292 of 2019

and

C.M.P.No.2162 of 2019

1.Meenakshisundaram

2.Sasikumar

...Petitioners

Vs

1.Sangeetha,

2.Manigandan

3.The Member Secretary,
CMDA, Office at,
Thalamuthnatarajan Maligai,
Chennai-600 008

4.The Collector,
Thiruvallur Distrit.

5.The District Revenue Officer,
Thiruvallur

6.The Revenue Divisional Officer,
Ponneri

7.The Tahsildar,
Ambattur Taluk,
Ambattur, Chennai-600 053.

8.The Revenue Inspector,
Maduravoyal Firka,
Porur.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and decreetal order in I.A.No.349 of 2017 in O.S.No.250 of 2018, on the file of the Subordinate Judge, Poonamalle dated 23.10.2018, is contrary to law, manifestly erroneous and unjust and in any event it is liable to set aside.

For Petitioners : Mr.V.Lakshminaryanan

For R3 :Mr.Karthik Rajan

For R4 to R7 : Mr.Dev Narendran

For R1, R2 & R8 : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order I.A.No.349 of 2017 in O.S.No.250 of 2018, on the file of the Subordinate Judge, Poonamalle dated 23.10.2018

2.The Revision petitioner is the plaintiff in O.S.No.250 of 2014 and seeks permanent injunction restraining the defendants and enjoyment of the suit property, trespassing illegally and grabbing the same.

3.Pending suit, the petitioner herein has preferred the application in I.A.No.349 of 2017 to amend the plaint.

4.After hearing both sides, the trial judge dismissed the petition on the ground that already the relief of permanent injunction has been

amended as one for declaration and now again sought to be amended for recovery of possession.

5. Against the order of the trial Court in I.A.No.349 of 2017 in O.S.No.250 of 2014 dated 23.10.2018, the petitioner is before this Court with the present prayer.

6. The learned counsel for the revision petitioner submitted that the trial Court's order is illegal and contrary to law. The trial Court did not consider the fact properly. Originally, the suit was filed for permanent injunction, subsequently, the prayer was amended for declaration of title. At that time, the prayer for recovery of possession is not sought for by the plaintiff. When the case is posted for cross examination, the plaintiff filed this petition stating that there are typographical errors. It is not correct that amendment to be allowed and the prayer will be barred by limitation and the nature of the suit will be changed and reiterated other grounds raised and the grounds of provision and thus pleaded to allow this petition.

7. The learned counsel for the respondents submitted that since the title of the plaintiff is denied the petition was filed for amending the prayer for declaration pending suit. The defendant encroached in to the suit

property so that the prayer for recovery of partition sought for by the plaintiff. The order of the trial Court is legally correct and pleaded to dismiss the revision petition.

8.Heard learned counsel for both the parties and perused the materials available on record.

9.The plaintiff has filed the suit for permanent injunction restraining the defendant from interfering with regard to the plaint schedule property. While filing written statement, the defendants denied the title of the plaintiff with regard to Plaint scheduled properties, so that the plaintiff filed petition to amend the plaintiff prayer for declaring the right of the plaintiff with regard to suit properties and that was allowed. In the affidavit, Plaintiff states that the 1st defendant has trespassed the suit property by mistake. He did not amend the plaint for recovery of possession, now filed the petition to amend the plaint prayer in this regard for recovery of partition in which the defendant trespassed. The trial court without considering the nature of the case and circumstances, pending suit has allowed the amendment with regard to recovery of possession. Hence, accordingly plaintiff filed this petition. Power to allow the amendment is

vide and hence, the Court should not adopt hyper technical approach, but on the other hand liberal approach should be the general rule. All amendments of pleadings should be allowed which are necessary for determination of a real controversy in the suit. Hence, the trial Court order is unsustainable and the same is set aside.

10. Accordingly, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

14.12.2020

vsn

Index: Yes/No

Speaking Order: Yes/No

To

1. The Member Secretary,
CMDA, Office at,
Thalamuthnatarajan Maligai,
Chennai-600 008

2. The Collector,
Thiruvallur Distrit.

3. The District Revenue Officer,
Thiruvallur

5/6

4.The Revenue Divisional Officer,

Ponneri

5.The Tahsildar,

Ambattur Taluk,

Ambattur, Chennai-600 053.

6.The Revenue Inspector,

Maduravoyal Firka,

Porur.



C.R.P.(PD). No.292 of 2019

and

C.M.P.No.2162 of 2019

WEB COPY

14.12.2020