

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2020

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRP.No. 1311 of 2013
and M.P.No. 1 of 2013

Anna Nehru Matriculation Higher Secondary School
rep. By its Correspondent
Mudalaipatti,
Namakkal-637003.

..Petitioner

Vs

1.Thangarasu
2.K.Kandasamy
3.M.K.Sellappan
4.Kandasamy
5.Mudalaipatty Panchayat rep.byt its President
Namakkal
6.Tamil Nadu Water and Drainage Board,
rep. By its Administrative Engineer,
Namakkal.
7.Namakkal Municipality
Rep.by its Commissioner.

..Respondent

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order dated 23.01.2013 made in I.A.No. 1274 of 2012 in O.S.No. 121 of 2010 on the file of the Principal District Munsif, Namakkal.

For Petitioner : Mr.Krishna Prasad.R

For Respondents : Mr.D.Pradeep Kumar - R1 to R3
Mr.Y.T.Aravind Gosh, AGP-R5
Mr.R.Ganesh Babu - R6
Mr.M.Rahamathivanan - R7
R4-No Appearance

ORDER

The Civil Revision Petition is filed against the order dated 23.01.2013 made in I.A.No. 1274 of 2012 in O.S.No. 121 of 2010 on the file of the Principal District Munsif, Namakkal.

2. The respondents 1 to 4 herein have filed the Suit in O.S.No.121 of 2010 against the petitioner herein , who is the 3rd defendant in the suit for permanent injunction restraining to grant water supply connection to the 3rd defendant through the existing pipeline. During the pendency of the suit, the respondents 1 to 3 have filed two applications for impleading the Namakkal Municipality/7th respondent herein and for amendment of prayer as mandatory injunction respectively. The trial Court has allowed the application filed in respect of impleading the Namakkal Municipality and dismissed application in respect of amendment of prayer for Mandatory injunction. Hence the respondents 1 to 3 have again filed a petition in I.A. No.1274 of 2012 for amendment of prayer and the same was allowed by the trial Court. Challenging the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submitted that the trial Court failed to consider the fact that the plaintiffs/respondents 1 to 4 herein cannot re-agitate the same in subsequent application, when the matter had already reached the finality in the earlier application. Therefore the suit itself is not maintainable. Further the respondents 1 to 3 without challenging the said order of the trial Court, had again filed an application before the trial Court for the same relief which is barred by res-judicata. Hence the order of the trial Court warrants interference.

4. It is contended by the respondents/plaintiff that they have already filed an application in I.A.No. 387 of 2012 seeking amendment and due to inadvertence could not state the reason for amendment, hence the said application was dismissed on technical grounds. But on the subsequent application in I.A.No. 1274 of 2012, the trial Court has considered the reasons stated for amendment and allowed the application, therefore no res-judicata will apply as contended by the learned counsel appearing for the petitioner herein.

5. Heard both sides and perused the documents available on record.

6. Admittedly, the respondents 1 to 4 herein have filed the Suit for permanent injunction in O.S.No.121 of 2010 against the petitioner herein as well as respondents 5 &6 herein. The petitioner herein is arrayed as 3rd defendant in the suit. The said suit was filed for permanent injunction restraining to grant water supply connection to the 3rd defendant/pettitioner herein through the existing pipeline. The main contention of the respondents is that the petitioner had obtained domestic connection and used the same for commercial purpose, therefore

the same cannot be allowed. Though the said suit was filed for permanent injunction and subsequently during the pendency of the suit, water connection was given, it is necessary to amend the prayer as mandatory injunction. It is vehemently contended by the learned counsel for the petitioner that since the earlier application was dismissed, the respondents have filed another application for the same relief, therefore res-judicata will apply.

7. On a careful reading of the plaint, the prayer sought for is to restrain the defendants 1&2/respondent 5&6 herein to give water connection to the 3rd defendant/petitioner herein and during pendency of the suit, water connection was granted to the 3rd defendant /petitioner herein. Therefore the application came to be filed to amend the prayer from permanent injunction to mandatory injunction. Further, the earlier application seeking mandatory injunction was dismissed only on technical grounds but not on merits, therefore the contention of the learned counsel for the petitioner that the rule of res-judicata is applicable to the present case cannot be accepted.

8. Considering the fact that the suit was initially filed for permanent injunction and during pendency of the suit, water connection was granted to the petitioner herein, this Court is of the view that no prejudice would be caused to the petitioner herein in allowing the amendment application and no res-judicata will apply to the facts of the present case. This Court finds no error or illegality in the order passed by the trial Court and does not warrants any interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Munsif,
Namakkal.

2.The Section officer,
V.R. Section, High Court, Madras.

+1 cc to The Government Pleader, Sr.No. 27787
+1 cc to M/s. T.Dhanyakumar, Advocate Sr.No. 27656
+1 cc to M/s.R.Ganesh Babu, Advocate Sr.No.
+1 cc to M/s.M.Rajamathivathanan, Advocate Sr.No. 27979

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AJS (CO)
RMP (29/10/2020)



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