

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2020

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THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

C.R.P.(PD).No.1241 of 2020
and
C.M.P.No.6708 of 2020

Ravishankar,
S/o.Athiyappa Gounder.

... Petitioner/Defendant

Vs.

Palanivel Gounder,
S/o.Raja Gounder.

... Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final orders dated 22.08.2019 passed in I.A.No.1 of 2019 in O.S.No.25 of 2015 on the file of the Subordinate Judge, Rasipuram.

For Petitioner : Mr.R.Nalliyappan

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the order dated 22.08.2019 passed in I.A.No.1 of 2019 in O.S.No.25 of 2015, by the learned

Subordinate Judge, Rasipuram.

2.The respondent herein has filed a suit in O.S.No.25 of 2015 for declaration and permanent injunction. In the aforesaid suit, the respondent has filed an application in I.A.No.1 of 2019 to amend the extent of land as 0.05.6 cents instead of 0.06 cents as stated in the schedule of the plaint and the same was allowed by the trial Court. Aggrieved by the said order, the defendant has filed the present Civil revision petition before this Court to set aside the said order.

3.The learned counsel appearing for the petitioner submitted that the respondent has filed the suit by stating that the petitioner has encroached over the respondent's land to an extent of 0.06 cents, whereas the application filed by the respondent to amend the extent of land as 0.56.6 cents, that too only after the report filed by the Advocate Commissioner. However, the trial Court erroneously allowed the said application without assigning any reason, which is not permissible in law. Therefore, the order of the trial Court, dated 22.08.2019 passed in I.A.No.1 of 2019 in O.S.No.25 of 2015 is liable to be set

aside.

4.Heard the submissions made by the learned counsel for the petitioner and perused the materials available on record.

5.On perusal of the affidavit, the primary reason stated in the affidavit as well as the grounds raised by the revision petitioner is that the application filed by the respondent to amend the extent of land in the suit scheduled property is, after the lapse of five years from the date of filing of the suit, the instant application has been filed only after filing the report by the Advocate Commissioner. However, it is seen that the aforesaid application is filed at a pretrial stage.

6.Before considering the submissions made by the learned counsel for the petitioner, it is useful to refer to the Judgment of the Hon'ble Supreme Court in the case of ***Rameskumar Agarwal Vs. Rajmala Exports Private Limited and others*** reported in ***(2012) 5 SCC 337***, wherein the Supreme Court has reiterated

the principles to be covered in the matters of allowing a petition to amend the plaint. It is useful to extract paragraph Nos.20 & 21 hereunder:

“20.In Revajeetu Builders and Developers Vs, Narayanaswamy and sons (2009) 10 SCC 84, this Court once again considered the scope of amendment of pleadings in para 63, it concluded as follows:

'63.On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide.

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and

character of the case; and

(6) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.'

21.It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.”

7.Keeping in mind the principles reiterated by the Hon'ble Supreme Court in the decisions cited supra, this Court is of the view that allowing the application filed in I.A.No.1 of 2019 by the respondent would not cause any prejudice to the revision petitioner as the prayer in the application is to amend the error committed at the time of filing the plaint. Therefore, this Court does not find any reason to set aside the order of the Court below.

8.Accordingly, this Civil Revision Petition stands dismissed. No costs.

23.03.2020

Index : Yes/No
Internet : Yes / No
Speaking order/Non speaking order.
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To
The Sub-Judge, Rasipuram.

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D. KRISHNAKUMAR, J.,

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