

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).No. 2497 of 2018

and

C.M.P.No. 15252 of 2018

Anbarasi(deceased)

1.Panchavarnam

2.Malathi

3.Revathi

...Petitioners

Vs.

1.Seethalakshmi

2.Olivillaku

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 12.03.2018 made in I.A.No. 12 of 2018 in O.S.No. 208 of 2012 on the file of the District Munsif Court, Jayankondam.

For Petitioners : Mrs.Senthil Vadivu

For Respondents : No appearance

ORDER

The plaintiffs in O.S.No.208 of 2012 are on revision aggrieved by the dismissal of their application in I.A.No.12 of 2018 seeking amendment of the plaint.

2. The suit in O.S.No.208 of 2018 was instituted originally for a permanent injunction restraining the defendants from interfering with the plaintiffs' possession of the property, which is admittedly classified as Village Natham. The written statement was filed on 11.03.2013. An application was filed in December 2017, just after the examination of P.W.1 seeking to amend the plaint to substitute relief in the plaint as one for recovery of possession after removal of super structure and for a mandatory injunction for removal of super structure.

3. This application was resisted by the defendant contending that the construction was put up even during the year 2013, hence the application for amendment is barred by limitation. The Trial Court, upon a consideration of the averments in the affidavit and the counter concluded

that the application is belated and no explanation has been given as required under Proviso to Order 6 Rule 17 of C.P.C., for not filing the application earlier in point of time. On the above conclusions, the learned Trial Judge dismissed the application.

4. I have heard Mrs. M.Senthil Vadivu, learned counsel for the petitioners. Respondents though served, are not appearing either in person or through counsel.

5. Though the defendant would claim that the construction has been put up in 2013 itself, there is no plea that the construction has been completed in the year 2013 when the written statement was filed on 11.03.2013. It is also stated that the first defendant has stopped construction in view of the order of the Court. Therefore, the claim that the reliefs sought for namely, the relief of recovery of possession along with the relief of mandatory injunction are barred by limitation cannot be decided in the application for amendment. It is a matter, which has to be decided on the basis of evidence that has to be let in by the parties.

6. On the second ground on which the application has been dismissed by the Trial Court, I do not think that it will be proper to reject a substantial amendment solely on the ground of delay. The Proviso under Order 6 Rule 17 does not bar an amendment after commencement of trial. It only requires the plaintiff to plead as to why the application could not be filed earlier. In the case on hand, in the affidavit itself, the plaintiffs have clearly stated that the defendant agreed to remove the super structure in a Panchayat that was convened in the village, hence, he did not chose to discuss it with the counsel. When parties are not highly literate, the Court should not insist upon strict compliance with the requirements of law, which are directory in nature. The proviso to Order 6 Rule 17 is a directory provision which invests the discretion in the Court to allow the amendment upon satisfaction that there was some reason for the plaintiff to have failed to seek the amendment earlier.

7. I am of the considered opinion that the Trial Court was not right in applying the Proviso very strictly and throwing out the application for amendment. The defendant had admitted that he had put up the construction

pending suit therefore, the defendant was aware of the fact of the threat to his title and possession. Therefore, he is not going to be taken by surprise because of the amendment. Hence, the order of the Trial Court needs to be interfere with.

8. For the foregoing reasons, the order of the Trial Court is set aside, the amendment sought for is allowed and the I.A.No.12 of 2018 will stand allowed. The plaintiff shall file the amended plaint on or before 09.11.2020. The first defendant will have a right to file additional written statement to the amended plaint.

05.10.2020

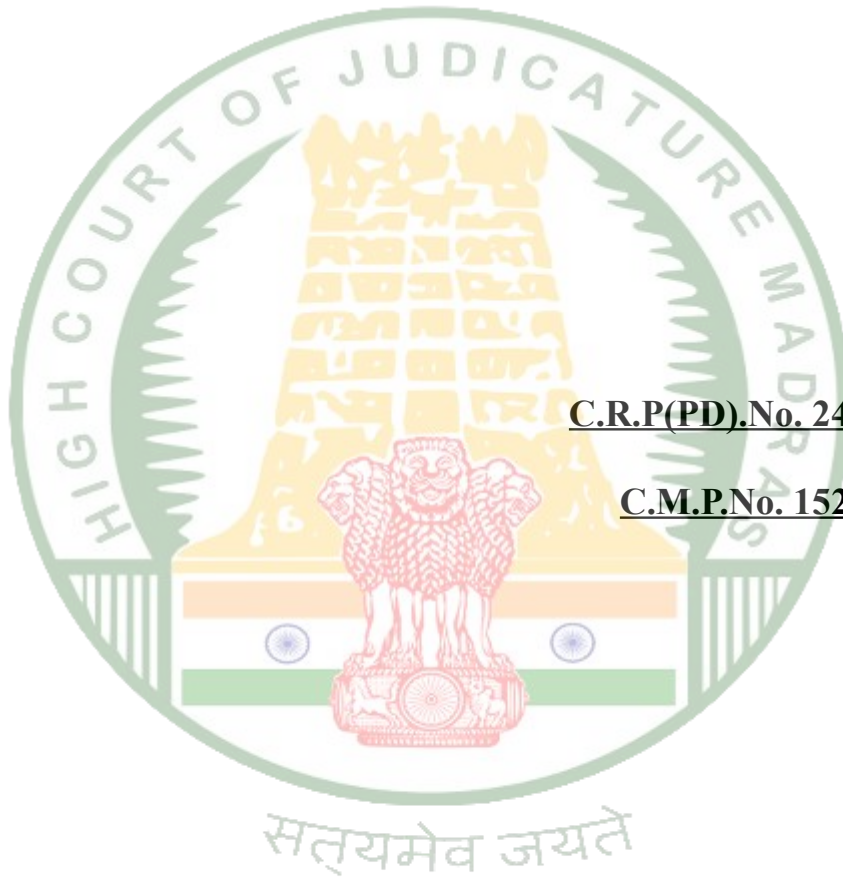
kkn

To:
The District Munsif Court,
Jayankondam.

C.R.P(PD)No 2497 of 2018
and C.M.P.No. 15252 of 2018

R.SUBRAMANIAN, J.

KKN



C.R.P(PD).No. 2497 of 2018
and
C.M.P.No. 15252 of 2018

WEB COPY

05.10.2020