

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.77 of 2018

1.Babli

2.Yesuadial Gunavathy Petitioners

Vs

Arunkumar

Pushpaleelavathy (died) Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and final order passed in I.A. No.1002 of 2017 in O.S. No.131 of 2015 on the file of Principal District Munsif Court, Erode dated 08.12.2017 to set aside the same.

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For Petitioners : Mr.A.Sundaravadhanan

For Respondent : Mr.I.C.Vasudevan

ORDER

The defendant in O.S.No.131 of 2015 has come up with this revision challenging an order, allowing an application filed under Order VI Rule 17 of the Code of Civil Procedure, seeking amendment of the plaint.

2. The suit relates to a easementary right of Cart track. The plaintiff originally instituted the suit for a permanent injunction restraining the defendants from interfering with his right to use the common Cart track running through the B Schedule Property to reach his A Schedule property. In the description in Schedule B, the suit pathway was shown to be running in S.Nos.270/5, 271/1 B and 272/5.

3. The defendants would resist the claim of the plaintiff contending that he is not entitled to any right over the Cart Track. It is also claimed by them that the plaintiff had encroached upon their land in S.No.273/15D and laid a Cart Track. They had also filed a suit in O.S.No.213 of 2015 seeking Permanent injunction and demarcation of boundary line and the same is pending. The suit in O.S.No.131 of 2015 out of which, the present revision arises, was posted for trial on 01.08.2017. On

the said date, the plaintiff filed his proof affidavit and certain documents were also marked on his side. Thereafter, the plaintiff came up with the application in I.A.No.1002 of 2017, seeking amendment of the plaint to include the relief of declaration and also to include the correct survey Number namely 273/15 B in the suit B Schedule, so as to cover the exact location of the Cart Track as pointed out by the Commissioner.

4. This is opposed by the defendants contending that the application is belated and it is a Post trial amendment. It was their further contention that the nature of the entire suit will get altered if the amendment is allowed.

5. The trial Court upon a consideration of the nature of the suit, and dispute between the parties concluded that the amendment is only to aid the Court to effectively adjudicate the claim of the parties and the delay could be compensated by payment of cost. Therefore, the trial Court allowed the application on condition that the plaintiff pays a cost of Rs.1,500/-. It is not in dispute that the cost has been deposited since the defendant is refused to receive the cost.

6. I have heard Mr.A.Sundaravadhanan, learned counsel appearing

for the petitioners and Mr.I.C.Vasudevan, learned counsel appearing for the respondent.

7. Mr.A.Sundaravadhanan, learned counsel, appearing for the petitioners would contend that the trial Court was not right in allowing an application for amendment. He would submit that a suit for permanent injunction is now sought to be converted into a suit for declaration and new property is sought to be added. This according to him, would necessarily alter the nature of the suit. He would also point out that the application was filed after the commencement of trial i.e. after the proof affidavit of PW1 was filed and documents were marked.

8. I have considered the submissions of the learned counsel for the petitioners.

9. The original suit is one in respect of right of way and the amendment sought for is to include the relief of declaration of the said right of easement claimed by the plaintiff in the original suit. After the filing the Commissioner's report, the plaintiff had come to know that the suit Cart Track runs through the land in Survey No.273/15 D also. In the affidavit filed in support of the application, it has been specifically stated that this

fact that the suit Cart Track runs in a portion of Survey No.273/15D also was gathered by the plaintiff only after the Commissioner's report was filed.

10. No doubt, the Courts will have to be vigilant in allowing Post Trial amendments. But this amendment application has been filed immediately after the filing of the proof affidavit of the plaintiff, therefore, it cannot be said that the amendment is sought for to cover up or to rectify certain defects that has been pointed out by the defendants in the Cross examination. The object behind proviso to Order VI Rule 17 of the Code of Civil Procedure is only to curtail unnecessary post trial amendments. The Courts will have to exercise the discretion in a proper manner in deciding whether the amendment is to be allowed or not. The proviso to Order VI Rule 17 of Code of Civil Procedure, does not absolutely bar amendment after trial had commenced. If the party is able to show that he could not have sought for the amendment earlier in point of time, despite exercise of due diligence, the Court can allow a post trial amendment.

11. As already pointed out, in the affidavit filed in support of the application for amendment, the plaintiff had categorically stated that he came to know that the suit pathway runs through Survey No.273/15 D only

after the Commissioner's report was filed. The cause of action for declaration also arose only upon the defendants filing a suit in O.S.No.213 of 2015, seeking demarcation of the boundary and also a mandatory injunction seeking removal of the pathway in Survey No.273 /15 D.

12. I am therefore of the considered opinion that the trial Court was justified in allowing the amendment which would go a long way to shorten the litigation and help the Court in adjudicating the rights of the parties in a better manner. I, therefore find no merits in the revision. The revision therefore fails and it is accordingly dismissed. No costs.

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Index: Yes/No

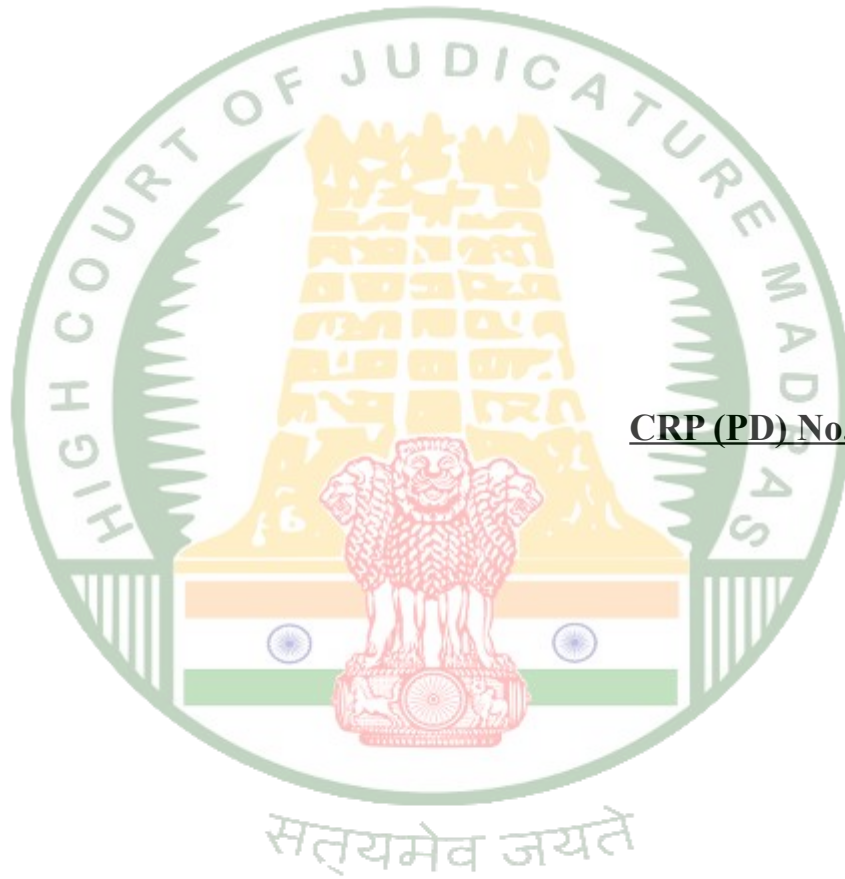
Speaking order / Non speaking order

To

The Principal District Munsif Court, Erode.

R.SUBRAMANIAN, J.

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