

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.No.2406 of 2019 and
C.M.P.No.15766 of 2019

P.Mathammal

... Petitioner

Vs

1.P.Lokanathan
P.Boopathi (Late)
2.P.Krishnamoorthy
3.P.Arunachalam
4.G.Kanagaraj

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order in I.A.No.2 of 2019 in O.S.No.1058 of 2010 on the file of the I Additional District Munsif, Salem.

For Petitioner : Mr.A.Murugan

For Respondents : Mr.P. Jagadeesan

ORDER

This Civil Revision Petition has been filed by the petitioner seeking to set aside the fair and decreetal order in I.A.No.2 of 2019 in O.S.No.1058 of 2010 passed by the learned I Additional District Munsif, Salem.

2. The petitioner/plaintiff has filed a suit in O.S.No.1058 of 2019 against the respondents/defendants for the relief of permanent injunction alleging that the respondents are interfering with her alleged possession over the suit property. Subsequently, the respondents herein have filed written statement in December, 2011. Thereafter, issues were framed and trial has commenced in the suit. On the side of the plaintiff, she examined herself as PW1, besides PW2 to PW4 were examined as witnesses.

3. The fifth respondent has filed a suit in O.S.No.652 of

2014 for declaration of his title and for delivery of possession. The evidence was recorded and the petitioner was cross examined those witnesses. After closing of the plaintiff's side evidence, the petitioners have also examined as DW1 to DW3 on their side. The respondent has concluded his arguments and the matter was adjourned for hearing on the defendant's side arguments. At this stage, the petitioner has filed an interlocutory application in I.A.No.2 of 2019 seeking to amend the prayer of declaration and permanent injunction and the said application was dismissed by the Court below. Therefore, the petitioner has filed the present revision petition before this Court.

4. The learned counsel appearing for the petitioner submitted that the petitioner has filed the said application for the relief of declaration of title over the suit property. The fifth respondent has filed the suit in O.S.No.652 of 2014 on the file of this Court seeking for the relief of declaration of title over the suit property and hence, the petitioner was necessitated to seeking for the relief of declaration of title over the suit property in the above suit. Therefore, the petitioner filed this application to make necessary amendment in the above suit which is very necessary one and the nature of suit is not altered. Unless the petition is allowed the petitioner will be put to irreparable loss and hardship which cannot be compensated by any money value. Therefore, the said order passed by the Court below is liable to be set aside.

5. The learned counsel for the respondent submitted that the amendment petition was filed at the stage of arguments. It is highly belated. If the petition is allowed, it would change the nature and character of the suit and it was posted for trial. The petitioner has not assigned any valid reason in the affidavit for the delay. The petitioner has failed to prove that in spite of due diligence and she could not raise the matter before the commencement of trial. Therefore, the Court below has rightly considered the interim application in all prospects and rightly dismissed the same. It does not warrant interference of this Court.

6. By considering the aforesaid facts and circumstances of the case, the petitioner has filed the suit in O.S.No.1058 of 2010 before the Court below for permanent injunction against the petitioner. At the time of the suit is posted for arguments for the petitioner side and the present application has filed at the time of preparing the written arguments. He came to know that the aforesaid declaration prayer was not sought by the petitioner.

7. At this stage, the petitioner has filed the amendment petition to amend the prayer at the stage of the conclusion of arguments and posted to submit the written arguments of the parties concerned before the Court below. The learned counsel for the petitioner has relied upon the decision in the case of Chitra v. Kannan reported in 2015 (1) CTC 820, wherein it has been held as follows:

"Code of Civil Procedure, 1908 (5 of 1908), Order 6 Rule 17 - Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Sections 25(b), 27(a) & 27(c) - Suit for Injunction - Amendment of plaint - Prayer for declaration sought to be included - Nature of suit does not change by inclusion of prayer for declaration - Plaintiff has to pay court-fee under section 25(b) of Court Fees Act - If issue regarding title is framed without prayer for declaration, Court-fee shall be paid under section 27(a)(2) - End results shall be one and same because Court-fee to be collected shall be on half of value of property, which is subject matter of suit - Impugned order set aside - Civil Revision Petition allowed."

Further, the decision of the Hon'ble Apex Court in the case of Vidyabai and Others Vs. Padmalatha and Anr reported in (2009) 73 AIC p.34, held as follows:-

"Civil Procedure Code, 1908 - Order 6 Rule 17 - Amendment of pleadings - Whether pleadings can be directed to be amended after hearing of a case begins - Order 6 Rule 17 is couched in a mandatory form - Court's jurisdiction to allow such an application is taken away unless conditions precedent therefore are satisfied - Court must come to a conclusion that in spite of due diligence parties could not have raised the matter before commencement of trial - It is primal duty of court to decide as to whether such an amendment is necessary to decide real dispute between the parties - Only if such a condition is fulfilled, amendment is to be allowed - However, Court's jurisdiction, in a case of this nature is limited - Unless jurisdictional fact is found to be existing, Court will have no jurisdiction at all to allow amendment of plaint Civil Procedure Code, 1908 - Order 6 Rule 17 - Amendment of plaint - Trial is deemed to commence when issues are settled and case is set down for recording of evidence."

8. In the light of the aforesaid decision stated supra, the petitioner has filed the aforesaid amendment application, after a lapse of nine years, and there is no acceptable reason stated in the affidavit for the delay in filing the said application especially for the declaration suit, there is no grounds stated in the Court below for the reason of delay. Thus, the Court below has rightly dismissed the said application. Hence, there is no merit in the civil revision petition and consequently, the Civil Revision Petition shall stand dismissed. No order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msm

To

The I Additional District Munsif, Salem.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.Jagadeesan, Advocate, Sr.No.19635

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SSV(CO)
GS(14/08/2020)

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