

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.No.2408 of 2019 and
C.M.P.No.15768 of 2019

1. Ponnusamy
2. Selvaraj ... Petitioners/Plaintiffs

vs.

1. P.Lokanathan
P.Boopathi (Died)
2. P.Krishnamoorthy
3. P.Arunachalam
4. G.Kanagaraj ... Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.2 of 2019 in O.S.No.1084 of 2010 on the file of the I Additional District Munsif, Salem.

For Petitioner :Mr.A.Murugan
For Respondents :Mr.P. Jagadeesan

ORDER

The Petitioner herein has filed a suit in O.S.No.1084 of 2010 for the relief of permanent injunction against the respondents herein alleging that the respondents are interfering with their peaceful possession over the suit property and the respondents herein have filed written statement in the month of December, 2011 stating that the 5th defendant/5th respondent herein has filed a suit in O.S.No.652 of 2014 for declaration of his title and delivery of possession. The Plaintiff in O.S.No.652 of 2014, the 5th Respondent herein, had filed a petition for joint trial and joint trial has been ordered in O.S.No.652 of 2014. The evidence of P.W.1 to P.W.4 was recorded and the petitioner herein have cross examined those witnesses. After closing of the plaintiff's side evidence, the petitioners have also cross examined D.W.1 to D.W.3. The petitioners/plaintiffs have concluded their arguments and the matter was adjourned for hearing the defendants' side arguments. At this stage, the revision petitioners have filed an interlocutory application in I.A.No.2 of 2019 in O.S.No. 1084 of 2010 seeking to amend the prayer in the plaint and Court fee valuation. As the said application was dismissed by the Court below, the petitioners have filed the revision petition before this Court.

2. The learned counsel appearing for the petitioner submitted that the Petitioners herein have filed the suit in O.S.No.1084 of 2010 for the relief of permanent injunction against the respondents. The joint trial was taken in O.S.No.652 of 2014. At the time of preparing written arguments on behalf of the petitioner herein, the petitioners came to know that the trial Court framed the issue, 'Whether the plaintiff without seeking relief of declaration of title, plaintiffs are entitled for the relief of permanent injunction'. The defendants/respondents herein have filed written statement in December 2011, wherein the defendants have taken a defence plea that the 5th respondent/ defendant is the owner of the suit property and the petitioners/plaintiffs were in permissive possession of the defendants' predecessors. The 5th respondent/ defendant filed a suit in O.S.No.652 of 2014 on the file of I Addl. District Munsif, Salem, seeking for the relief of declaration of title over the suit property. Hence, the petitioner was necessitated to seek the relief of declaration of title over the suit property by way of amendment in the plaint. Therefore, the petitioners have filed the above interlocutory application to make necessary amendment in the plaint which is essential for the petitioners and the nature of suit will not be altered. Under Order 6 Rule 17 of CPC, the trial court may at any stage of the suit proceedings, allow the parties to alter or amend the pleading in such a manner and on such terms for the purpose of determining the real issues between the parties. The Court below has erroneously dismissed the application. Therefore, the said order passed by the Court below is liable to be set aside.

3. The learned counsel appearing 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 is post trial amendment. The petitioner has not assigned any valid reason for the delay. The petitioner has failed to state any bonafide reason for not filing the application before commencement of trial. Therefore, the Court below has rightly considered the said application in all aspects and dismissed the same. Therefore, the order of the Court below does not warrant interference of this court.

4. By considering the aforesaid facts and circumstances of the case, this court comes to the conclusion that when the suit was posted for arguments of the defendants, the plaintiffs/petitioners herein have filed the instant application for amendment in the plaint after a lapse of nine years. The petitioners have not taken any steps within a reasonable time for filing such application. Further, there is no acceptable reason assigned by the petitioner as to why the petitioners have not filed the said application at the earlier stage of the suit when the written statement has been

filed during the month of December 2011 itself. As such, the petitioners have failed to show the bonafide reason before the court below for not filing the instant application before commencement of the trial. Therefore, the court below has rightly dismissed the said application.

5. Accordingly, the Civil Revision Petition stands dismissed. No order as to costs. Connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Vaan

To

The I Additional District Munsif, Salem

+1cc to Mr.P.Jagadeesan, Advocate, SR. No. 22921

+1cc to Mr.A.Murugan, Advocate, SR. No. 23354

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RLD (CO)
RMP (20/07/2020)



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