

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(PD).No.2501 of 2019

and

C.M.P.N.16408 of 2019

1.A.Annakilli

2.N.Muthukrishnan

...Petitioners

Vs

1.Chokammal,

2.Kasthuri,

3.Rani

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the Fair and decretal order dated 04.04.2019 in I.A.No.978 of 2017 in O.S.No.43 of 2011 on the file of the Principal District Munsif, Alandur and consequently dismiss the I.A.No.978 of 2017.

For Petitioner : Mr.Thangadurai.M

For R1 to R3 : Mr.R.Subramanian

ORDER

This Civil Revision Petition has been filed to set aside the order dated 04.04.2019 in I.A.No.978 of 2017 in O.S.No.43 of 2011 on the file of the Principal District Munsif, Alandur.

2.The Revision petitioners are the defendants in the Suit in O.S.No.43 of 2011. The respondents herein are plaintiffs, they have filed the suit against the defendants for declaration of saledeed dated 09.09.2008 executed by the 2nd defendant in favour of the 1st defendant is null and void and also prayed for permanent injunction against the defendant for the suit mentioned properties. The Plaint B Schedule property is part of A Schedule property. During the pendency of the suit, the defendants trespassed into B Schedule properties and built house so that the petitioner filed the petition to amend the plaint, to remove the encroachment and to recover the possession after demolishing the said construction.

3.The learned counsel for the petitioners/defendant submitted that the petitioners/defendants filed the suit for declaration with regard to sale deed dated 09.09.2008. It was alleged by the respondents/ plaintiffs that in the B Schedule property, the petitioners/defendants encroached and constructed the house where the petitioners/defendants are in possession for long period and enjoy the entire property in possession of the defendant. The allegation that the defendant trespassed in B Schedule property during the period of 2011 is false. In the revision petition the petitioners/defendants clearly stated about their possession and enjoyment of the suit scheduled property. After commencement of the trial any kind of amendment cannot be permitted. Further, the proposed amendment is barred by limitation and also will change the nature and character of the suit. The trial Court without considering this aspect allowed the petition, which is contrary to law and the learned counsel for the petitioners/defendants reiterated other grounds raised in the revision and thus pleaded to set aside the order of the trial Court and allow the Revision Petition.

4.The learned counsel for the respondent supported the order of the trial Court and the amendment sought by the plaintiff was consequential act of the defendant during the pendency of the Act. Hence, the amendment is sustainable and pleaded to dismiss the Revision Petition.

5.Heard the learned counsel for the parties and perused the materials available on record.

6. The petitioner is the defendant in the Suit in O.S.No.43 of 2011, the respondent/plaintiff filed the suit for the relief of declaration the sale deed dated 09.09.2008 executed by the 2nd defendant in favour of the 1st defendant is null and void. The A Schedule property is vacant site and the B Schedule property mentioned in the plaint Schedule is part of A Schedule property. According to the plaintiffs, during the period of injunction the defendant entrusted the property and built the terraced house which is the subject matter of the dispute. The defendants are now in unlawful possession of the said portion. Therefore, the plaintiff filed the petition for amendment in the plaint and further stated in the petition for mandatory

injunction to demolish the building put up in the B Scheduled property. The trial Court after considering the nature of the case and fact allowed the petition. The power to allow the amendment is wide and hence the Court should not adopt hyper technical approach, but on the other hand liberal approach should be the general rule. The technicalities of law should not be permitted to hamper the administration of justice between the parties and amendments are to be allowed in the pleadings to avoid multiplicity of litigation. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in this suit. According to the plaintiff, petitioners/defendants encroached in the B Scheduled property. Per contra, the petitioners/defendants contended that they are in possession for long period. In such circumstances in order to determine the dispute completely, the amendment has to be permitted. The merits of the application sought to be interrupted by way of an amendment and not to be judged at the stage of allowing the prayer for amendment. The trial Court rightly allowed the amendment, and I find no error in the order of the trial Court and confirmed the same.

V.SIVAGNANAM.J,

vsn

7. Accordingly, this Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is also closed. No costs.

08.12.2020

Index:Yes/No
Speaking Order: Yes/No
vsn



WEB COPY

**C.R.P.(PD). No.2501 of 2019
and
C.M.P.No.16408 of 2019**