

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3313 of 2017
and C.M.P.No.15472 of 2017

Chellamuthu

.. Petitioner/Plaintiff

Vs.

1.M.C.Kuppusamy

2.Chellamuthu
S/o.M.C.Kuppusamy

3.Kuppusamy

.. Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 07.12.2016 made in I.A.No.570 of 2016 in O.S.No.213 of 2008 on the file of the District Munsif Court, Dharapuram.

For Petitioner : Mr.N.Ponraj

For Respondents : Mr.R.Asokan

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 07.12.2016 made in I.A.No.570 of 2016 in O.S.No.213 of 2008 on the file of the District Munsif Court, Dharapuram.

2. The petitioner is the plaintiff and respondents are the defendants in O.S.No.213 of 2008 on the file of the District Munsif Court, Dharapuram. The petitioner filed the said suit for declaration of pathway, permanent injunction and mandatory injunction. The respondents filed written statement in October 2008 and additional written statement on 10.08.2011 and are contesting the suit. The trial commenced. Both the petitioner and respondents let in evidence and closed their side. When the suit was posted for arguments, the petitioner filed I.A.Nos.569 and 570 of 2016 to reopen and for amendment of the plaint. The respondents opposed the said petition contending that amendment sought for changes

the nature of suit and only to drag on the proceedings, the petitioner has filed the petitions. The learned Judge dismissed both the petitions.

3. Against the said common order of dismissal dated 07.12.2016, the petitioner has filed the present Civil Revision Petition challenging the order passed in I.A.No.570 of 2016 filed to amend the plaint dismissing the petition for amendment of the plaint.

4.The learned counsel appearing for the petitioner contended that some typographical error crept in, in the averments made in the plaint and the petitioner came to know about the error only from the Advocate Commissioner's report and additional written statement filed by the respondents. The plaint can be amended at any stage of the suit and also in the First Appeal and Second Appeal. The amendment sought for does not change the nature of the suit and no new cause of action is introduced. By amendment, no prejudice would be caused to the respondents. The learned Judge erred in holding that the amendment

sought for changes the nature of the suit and that the petition is filed only to drag on the suit. Unless amendment is ordered, the issues in the suit cannot be properly decided and prayed for allowing the Civil Revision Petition.

5.The learned counsel appearing for the respondents contended that the petitioner has filed petition after eight years of filing of suit, after conclusion of trial and when the suit was posted for arguments, only to drag on the proceedings. The learned Judge has given valid reason for dismissing the petition and there is no reason to interfere with the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the entire materials available on record.

7. In the suit filed by the petitioner on 18.06.2008, the respondents filed written statement in October 2008 and additional written statement on 10.08.2011. The Advocate Commissioner was appointed and filed his report. Based on the pleadings, necessary issues were framed and parties let in evidence and closed their side. Admittedly, the petitioner filed petition for amendment after commencement of trial. The Court can order amendment at any stage of the suit and if the amendment is sought for after commencement of trial, the plaintiff must allege and prove that in spite of due diligence, he could not file the petition for amendment before commencement of trial. In the present case, the petitioner has stated that the amendment sought for is only to correct the typographical error in the plaint, which he came to know from the report of the Advocate Commissioner and additional written statement filed by the respondents. The additional written statement was filed by the respondents on 10.08.2011. The petitioner has not given any reason for not filing the petition for amendment from 2011 before trial commenced.

Further, the amendment sought for is not to correct the typographical error. The nature of the amendment now sought for changes the nature of the suit.

8.The learned Judge has considered all the facts and law in proper perspective and dismissed the petition by giving cogent and valid reason. There is no irregularity or illegality in the order of the learned Judge warranting interference by this Court.

9.In the result, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No
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To

The District Munsif
Dharapuram.

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V.M.VELUMANI, J.

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