

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD). No. 647 of 2017
and C.M.P. No. 3255 of 2017

L. Jayaraman

... Petitioner

Vs

1.Munusami Naidu

2.Yuvaraj

3.Nantha Kumar

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 09.11.2016 made in I.A.No.281 of 2016 in A.S.No.17 of 2012 on the file of the Additional Sub Court, Chengalpattu.

For Petitioner : Mr. Karthikeyan

For Respondents : Mr. Sriram
for Mr.K.Govi Ganesan

ORDER

The matter is heard through "Video Conferencing".

The present Civil Revision Petition is filed to set aside the fair and decretal order dated 09.11.2016 made in I.A.No.281 of 2016 in A.S.No.17 of 2012 on the file of the Additional Sub Court, Chengalpattu.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S. No. 52 of 2010 on the file of the District Munsif cum Judicial Magistrate, Thirukazhukundram. They filed the above suit for permanent injunction restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the suit property. The respondents filed written statement. After contest, the suit filed by the petitioner was dismissed. The petitioner filed First Appeal in A.S. No.17 of 2012. The petitioner also filed I.A. No.281 of 2016 in A.S. No.17 of 2012 for amendment of schedule of the property to include the words "with thatched hut and fence" in schedule of

property in O.S. No. 52 of 2010 as well as in appeal grounds in A.S. No.17 of 2012. According to the petitioner, the “thatched hut and fence” and interference by the respondents were mentioned in the averments made in paragraph Nos. 4 and 6 of the plaint and by inadvertence, the same was not included in the schedule of the plaint. It is neither wilful nor wanton, but due to over sight and inadvertence. The petitioner is illiterate and plaint was prepared in English by the counsel and therefore, he was not aware of the omission in the schedule of the property. The proposed amendment will not change the character and nature of the suit. The petitioner has not introduced any new cause of action and no prejudice will be caused to the respondents. If amendment is not ordered, the petitioner would be put to irreparable loss and injury. The amendment is necessary for the purpose of determining the real question of controversy between the parties and to avoid multiplicity of proceedings.

2(a) The respondents filed counter affidavit and contended that the proposed amendment would change the character of the suit and petitioner was not diligent enough to amend the suit earlier. The petitioner is not in possession

of the suit property and prayed for dismissal of the petition.

2(b) The learned Judge dismissed the I.A. No.281 of 2016 filed for amendment, holding that the proposed amendment will change the character of the suit and petitioner was not diligent enough to amend the suit earlier.

3. Against the said order of dismissal dated 09.11.2016 made in I.A. No.281 of 2016, the petitioner has come out with the present petition.

4. The learned counsel appearing for the petitioner submitted that the learned Judge failed to see that petitioner made averments with regard to existence of thatched hut and fence in paragraph Nos. 4 and 6 of the plaint and also made averments that the respondents tried to interfere with the possession of the petitioner and tried to break the fence. By proposed amendment, the petitioner is not introducing any new cause of action and proposed amendment does not change the character of the suit. The amendment sought for is only for clarity of description of the property. The learned Judge failed to properly

appreciate the scope of Order VI Rule 17 of C.P.C., with regard to amendment of the plaint and prayed for allowing the Civil Revision Petition.

5. The learned counsel appearing for the respondents contended that inspite of being pointed out at the time of trial with regard to omission of mentioning “thatched hut and fence” in the schedule of suit property, the petitioner did not take any steps to amend the plaint at that time itself. The petitioner was not diligent enough in seeking the amendment at the earliest point of time. The petitioner has not proved due diligence in filing the petition. The amendment now sought for changes the entire character of the suit and new cause of action is introduced. The Trial Court, after elaborately considering the pleadings, evidence and arguments, dismissed I.A. No.281 of 2016, holding that the petitioner is not in possession of the suit property and prayed for dismissal of the Civil Revision Petition.

6. Heard Mr.Karthikeyan, learned counsel appearing for the petitioner as well as Mr.Sriram, learned counsel appearing for the respondents and perused the materials available on record.

7. From the materials on record, it is seen that the petitioner is seeking amendment of schedule of the property by adding the word “thatched hut and fence” in the plaint as well as in the appeal grounds. The amendment of plaint is dealt in Order VI Rule 17 C.P.C. It is well settled that the amendment can be ordered at any point of time and in number of judicial pronouncements, it has been held that the amendment of plaint can be ordered even at the stage of First Appeal as well as in the Second Appeal. The criteria is, parties should not introduce a new case, new cause of action or change the character of the suit by amendment. In the present case, as rightly pointed out by the learned counsel appearing for the petitioner, the petitioner has made averments with regard to existence of thatched hut and fence and also the interference made by the respondents in paragraph Nos. 4 and 6 of the plaint. In view of the said stand taken by the petitioner, it cannot be stated that by proposed amendment, the petitioner is introducing a new cause of action or trying to change the character of the suit. The respondents will not be prejudiced as they are aware of the averments made in the plaint with regard to thatched hut as well as

interference. It is for the petitioner to prove the possession with hut and fence.

7(a) A petition for amendment must be liberally considered to give an opportunity to the parties to clarify the description of the property. The learned Judge has considered the judgments of Trial Court on merits and dismissed the suit, holding that the petitioner is not in possession of the suit property. The said issue can be decided only in the appeal and not in the petition for amendment. The learned Judge has committed an irregularity in considering the merits of the appeal, instead of considering the petition for amendment. For the above reason, the order of the learned Judge dated 09.11.2016 made in I.A. No.281 of 2016 is set aside and I.A.No. 281 of 2016 filed by the petitioner is allowed. The petitioner is directed to carry out the amendment in the schedule of the plaint as well as in the appeal grounds within four week from the date of receipt of a copy of this order and file amended copy of the plaint as well as the appeal grounds before the Trial Court.

8. In the result, this Civil Revision Petition is allowed. Consequently,

connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

To

The Additional Subordinate Judge,
Chengalpattu.



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V.M.VELUMANI,J.

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