



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.R.P (MD) No.289 of 2020
and C.M.P (MD) No.1688 of 2020

- 1.Xavier Galdson
- 2.MaryJaya
- 3.Lucaus Dhas

... Petitioners/Respondents
6 to 8/Defendants 6 to 8

Vs.

- 1.Amaladhas
- 2.Maria Ponnesam ... Respondents 1 & 2/Petitioners/Plaintiffs
- 3.Lazar
- 4.Devadhason
- 5.Amirtharaj ..Respondents 3 to 5/Respondents 3 to 5/
Defendants 3 to 5
- 6.Justin
- 7.Maria Arputham
- 8.Maria Rajam
- 9.George
- 10.Sekar ...Respondents 6 to 10/Respondents
9 to 13/Defendants 9 to 13

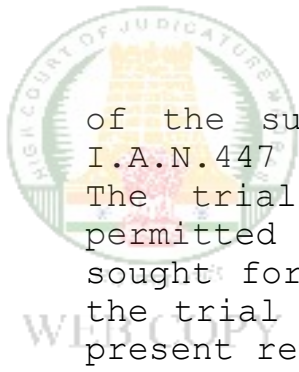
PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order in I.A.No.447 of 2018 in O.S.No.208 of 2014 dated 21.10.2019 passed by the Additional District Munsif Court, Padmanabhapuram.

For Petitioners	: Mr.K.P.Narayanakumar
For R1 & R2	: Mr.S.C.Herold Singh
For R3 to R9	: No appearance

O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.447 of 2018 in O.S.No.208 of 2014 dated 21.10.2019 passed by the Additional District Munsif Court, Padmanabhapuram.

2. The respondents 1 and 2, as plaintiffs, have filed the suit against the petitioner in O.S.No.208 of 2014 on the file of the Additional District Munsif, Padmanabhapuram. During the pendency



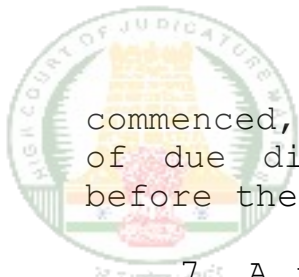
of the suit, the respondents 1 and 2 filed an application in I.A.N.447 of 2018 under Order 6 Rule 17 C.P.C to amend the plaint. The trial court, after enquiry, allowed the application and permitted the respondents 1 and 2/plaintiffs to amend the plaint sought for in the petition. Challenging the said order passed by the trial court, the defendants 6 to 8/petitioners have filed the present revision petition.

3. The learned counsel for the petitioners has taken a ground that the plaintiffs filed the application belatedly and the suit of the year 2014, they filed the application in the year 2018. It is the further contention of the petitioners that the plaintiffs, even without knowing the exact description of the properties, filed the suit and based on the Advocate Commissioner's report only, the plaintiffs filed amendment application and therefore, the amendment application ought not to be allowed by the trial court. The learned counsel for the petitioners would further submit that amendment of the plaint would change the cause of action and character of the suit. Therefore, the order of the trial court may be set aside by this Court.

4. The learned counsel appearing for the respondents 1 and 2/plaintiffs would submit that the trial court, after considering the pleadings of the parties, has rightly allowed the amendment application and the same need not be interfered by this Court.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and perused the materials available on record.

6. Admittedly, the respondents 1 and 2 filed the suit against the petitioner for declaration of his easementary right of the plaint 'E' schedule property and also sought for mandatory injunction regarding ABCD portions mentioned in the rough sketch in the plaint plan and restraining from interference of peaceful possession. During the pendency of the suit, the plaintiffs filed a petition to appoint an Advocate Commissioner to note down the physical feature and also to ascertain any alternate pathway is available. The learned Advocate commissioner inspected the suit properties and filed a report. Based on the Advocate Commissioner's report, the respondents 1 and 2/ plaintiffs found that the schedule of property has been wrongly quoted in the plaint and they have to be amended. Thereafter the plaintiffs filed an amendment application. Prior to amendment of Code of Civil Procedure, amendment of the plaint can be allowed at any stage of the proceedings. After amendment of Code of Civil Procedure in the year of 2002, Proviso clause to Order 6 Rule 17 has been inserted. As per the amended Civil Procedure Code, no application for amendment shall be allowed after the trial has



commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

7. A reading of the order of the trial court would show that the trial court has relied upon the judgments of the Hon'ble Supreme Court for allowing the petition and found that in case of allowing amendment, either cause of action or character of the suit would not be changed.

8. A reading of the entire materials and also pleadings of both parties also report filed by the Advocate Commissioner and considering the fact that the amendment is allowed at pre-trial stage and therefore, no prejudice would be caused to the petitioners and the defendants can defend the suit on the basis of the amended plaint and they can also file their additional written statement, this Court does not find any perversity in the order of the trial court and there is no merit in the revision.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

CM

To,

The Additional District Munsif Court, Padmanabhapuram.

+1 CC to M/s.K.P.NARAYANAKUMAR, Advocate (SR-11608[F] dated 13/03/2020)

C.R.P (MD) No.289 of 2020
and C.M.P (MD) No.1688 of 2020
11.03.2020

SS (CO)

TR(13.05.2020) 3P 3C