



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD) No.1710 of 2019

and

C.M.P. (MD) No.8803 of 2019

Ramamoorthy

.. Petitioner/Petitioner/
Plaintiff

Vs.

Late Subbammal

1.Arunachalam

2.Rajalakshmi

.. Respondents/Repondents/
Defendants

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records in the fair and decretal order dated 01.02.2019 in I.A.No.153 of 2018 in O.S.No.174 of 2012 passed by the Principal District Munsif Court, Aruppukottai and set-aside the same.

For Petitioner : Mr.V.Perumal

For Respondents : Mr.R.Ramadurai

ORDER

Heard the learned counsel appearing for both the side.

2.The Civil Revision Petition has been filed against the order passed in I.A.No.153 of 2018 in O.S.No.174 of 2012 dated 01.02.2019, passed by the learned Principal District Munsif, Aruppukottai.

3.The petitioner herein is the plaintiff and the respondent herein is the defendants in the suit. The petitioner herein has filed a suit in O.S.No.174 of 2012 for a prayer of declaration and for injunction. In the suit, the plaintiff filed a petition in I.A.No.153 of 2018 seeking permission to amend the plaint.



4. Brief substance of the application in I.A.No.153 of 2018 is as follows:

After the filing of the suit, the defendants forcibly encroached upon the property and put up constructions. The petitioner prayed for a mandatory injunction to remove the constructions. The prayer is not barred by limitation. The petitioner must be permitted to carry out the amendments in the plaint.

5. Brief substance of the counter in I.A.No.153 of 2018 is as follows:

In the written statement in paragraph no.3, it is stated that the defendants renovated the porch, which was constructed many years ago. Even in the Commissioner report, no where it is stated that the respondents have put up construction. The respondents have represented the Commissioner that the building was already renovated and at the time of renovation, there was no objection from the plaintiff. The respondents did not make any alteration in the property or put up any construction in the property after the filing of the suit. The date of encroachment is not mentioned in the plaint. The construction was actually completed at the end of May 2000. The prayer sought for is already time barred. The respondents put up the construction in their own property by removing the temporary structures already made. Both in the Commissioner report and in the sketch annexed to the plaint, the encroachment was not mentioned. Even in the amendment petition, specific extent of the portion, in which the plaintiff sought for mandatory injunction is not stated.

6. The trial Court after considering both sides, dismissed the petition. Against which, the petitioner has come forward with this revision petition.

7. On the side of the petitioner, it is stated that under Order 6 Rule 17 of CPC to avoid multiplicity of the litigations, the trial Court has to allow the petition. The Commissioner in his report and in the sketch has clearly mentioned about the encroachment and about the construction. The question of limitation is to be decided at the time of trial. It is further stated that during the pendency of the suit, the defendants made further constructions and hence, an amendment is necessary. The trial has not yet commenced and that the commissioner report clearly reveals the encroachment.

8. The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Pankaja and another v. Yellappa (D) LRS. And others** reported in **2004 (4) CTC 231**, wherein it is stated as follows:

"There can be no straight jacket formula for



allowing or disallowing amendment of pleading which depends on factual background of that case - such application should not be disallowed merely because it is opposed that it is barred by limitation - on facts held that applicability of limitation was arguable question and proposed amendment does not introduce different relief - application for amendment of pleading was allowed."

9.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Sampath Kumar v. Ayyakannu and another** reported in **2002 (4) CTC 189**, wherein it is stated as follows:

"Pleadings can be amended as any stage of proceedings for determination of real questions in controversy - delay of eleven years in moving application for amendment condoned on payment of cost of Rs.2,000 - question of delay is to be considered not with reference to institution of suit but with reference to stage of proceeding - pre trial amendment to be allowed more liberally than amendment after commencement of trial."

10.On the side of the respondents, it is stated that recovery of possession was not sought for in the plaint and hence, the amendment sought for is not necessary. Even in the written statement, the respondents have mentioned that without a prayer for recovery of possession, the amendments sought for is not maintainable. Date when the encroachment was made was not mentioned and cause of action was not mentioned in the amendment petition. There is no cause of action in the main suit itself. The amendment petition was filed after a lapse of 5 years. Only to delay the proceedings, this petition was filed. There is no cause of action and there is no necessity to amend the plaint.

11.On the side of the petitioner, it is stated that the respondents admitted the encroachment indirectly by admitting that the respondents removed the old porch and constructed a kitchen, which is clearly an admission statement. In the sketch filed by the Commissioner, the encroached portion is mentioned in black color and prayed the petition to be allowed.

12.It is seen that the trial Court in its order in paragraph no.9, has admitted that there is a need for amendment and that the delay cannot be decided in the interlocutory application. But the trial Court dismissed the petition on the ground that type of construction, exact area of construction were not stated.



13.It is seen that the case of the plaintiff is that the defendants during the pendency of the case, has put up some construction. The said construction has to be removed and the prayer for mandatory injunction is to be included. This petition was filed after five years from the date of filing of the suit. When the encroachment was made, the exact area of encroachment and measurements of the encroached area were not stated in the amendment petition. Though this petition was filed after five years from the date of filing of the suit, whether the prayer sought for is time barred cannot be decided in an interlocutory petition. The trial has not yet commenced.

14.In the above circumstances, an opportunity for the petitioner is to be given to file a fresh amendment petition by furnishing particulars regarding the exact measurement of the encroachment, measurement of the construction thereon. Hence, liberty is given to the petitioner to file a fresh amendment petition

15.With the above direction, the Civil Revision Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.S.II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

1.The Principal District Munsif, Arupukottai.

C.R.P.(MD)No.1710 of 2019

Dated: 25.02.2020

PU(19/05/2020) 4P 2C