



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (P.D.) (MD) .No.686 of 2018

and

C.M.P. (MD) .No.3048 of 2018

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1.Philip Devaraj
2.Johnson ... Petitioners/Respondents/Defendants
Vs.

1.Anthonisamy
2.Maria Stella
3.Maria Sagayaraja
4.Martin Chellaiah ... Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 13.12.2017 passed in I.A.No.650 of 2017 in O.S.No.20 of 2008 on the file of the District Munsif Court, Lalgudi.

For Petitioners : Mr.M.R.Sreenivasan
For Respondents : Mr.P.Arunjayatram

O R D E R

The Civil Revision Petition has been filed against the fair and decretal order dated 13.12.2017 passed in I.A.No.650 of 2017 in O.S.No.20 of 2008 on the file of the District Munsif, Lalgudi.

2. The respondents are the plaintiffs and they have filed a suit in O.S.No.20 of 2008 on the file of the District Munsif Court, Lalgudi, against the petitioners, for mandatory injunction. During the pendency of the suit, the respondents have filed an application under Order VI Rule 17 of C.P.C., in I.A.No.650 of 2017, to amend the plaint. The application was allowed and the plaint was ordered to be amended. The said order is under challenge before this Court.

3. The learned counsel for the petitioners would submit that originally the suit has been filed in the year 2008 for mandatory injunction and subsequently, after 10 years, the respondents have filed an application to amend the plaint. Even the petitioners have denied the encroachments in the written statement, the respondents have not taken any steps and only with the delay, they have filed the application. But, the trial Court has failed to consider this aspect. He has also placed reliance on the judgment of this Court challenging the amendment.



4. The learned counsel for the respondents would submit that even though the petitioners appeared, they have set ex-parte and they have not taken any steps to set aside the ex-parte order. The respondents have filed an execution petition and thereafter, they have filed a petition to set aside the ex-parte decree and the same was allowed and that is the reason why the delay had occurred. Thereafter, the respondents have filed a petition to re-issue the commission warrant and after the Commissioner inspected the property and filed a report, based on the Commissioner Report, he has filed a petition to amend the plaint. Further, in this case, the trial has not yet commenced and the trial Court has elaborately discussed and allowed the application and there is no interference is required.

5. Heard the learned counsel for the petitioners, learned counsel for the respondents and perused the materials available on record.

6. The respondents filed a suit against the petitioners in the year 2008 in O.S.No.20 of 2008 and the petitioners remained ex-parte. The respondents filed an Execution Petition. At that time, the petitioners filed a petition to set aside the ex-parte order with the delay. Subsequently, it was allowed and the petitioners contested the suit. Earlier, the respondents filed an application to appoint an Advocate Commissioner to note down the physical features in the property. Thereafter, they have filed an application to re-issue the commission warrant. Thereafter, they have filed a report and they find that there is some discrepancies in the extent and survey. Therefore, he wanted to amend the plaint, based on the Commissioner Report. In order to avoid the multiplicity of proceedings, they have filed an application to amend the plaint. The amendment of the plaint is not changed the cause of action or the character of the suit. In these circumstances, this Court does not find any perversity in the order passed by the trial Court. However, the suit has been filed in the year 2008 and the petition to amend the plaint has been filed in the year 2017 i.e., after 10 years. Therefore, it has to be compensated by the respondents to the petitioners for the inconvenience caused to them for ten years. In such circumstances, the Civil Revision Petition is dismissed. However, the respondents are directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the petitioners on or before 26.03.2020. The trial Court is directed to proceed with the case in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.



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7. List the matter on 27.03.2020, for reporting compliance.

Sd/-

Assistant Registrar(AS)

// True Copy //

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Sub Assistant Registrar(CS)

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To

The District Munsif,
Lalgudi.

COPY TO

The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.ARUN JAYATHRAM, Advocate (SR-11473[F] dated 13/03/2020)

+1 CC to M/s.R.NANDAKUMAR, Advocate (SR-11648[F] dated 13/03/2020)

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