



CRP.PD.No.595/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.595/2019 & CMP.No.3982/2019

[Video Conferencing]

Natarajan

.. Petitioner

Vs.

1.Karuppanan

2.Jayanthi

3.Maheswari

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in IA.No.414/2018 in OS.No.129/2017 on the file of the learned District Munsif cum Judicial Magistrate, Kodumudi dated 13.12.2018.

For Petitioner : Mr.V.S.Kesavan

For Respondents : Mr.K.Karthikeyan



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ORDER

- (1) The Civil Revision Petition is directed against the order made in IA.No.414/2018 in OS.No.129/2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Kodumudi, allowing the petition for amendment of plaint.
- (2) The 1st respondent in the present revision petition, as plaintiff, filed the suit in OS.No.129/2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Kodumudi, for declaration of plaintiff's 1/3rd share in the suit "A" Schedule property and also for a consequential injunction restraining the 1st defendant from interfering with his peaceful possession and to restrain him from closing the common well.
- (3) An alternative prayer was also made for partition. During the pendency of the suit, the 1st respondent/plaintiff filed an Amendment Application introducing a paragraph by which the plaintiff wanted to plead that the well which was also shown as a property was closed by the 1st defendant on 28.01.2018. Consequently, an additional prayer was also sought to be



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introduced by this amendment seeking mandatory injunction to restore the well stated to have been closed by the 1st defendant.

- (4) The application for amendment was contested by the defendants which include the revision petitioner herein, mainly on the ground that they have specifically stated in the written statement that there was no well in existence and that the new prayer cannot be introduced.
- (5) The Trial Court allowed the petition for amendment as the plaintiff has filed the application for amendment alleging an event that happened after filing of the suit. The Trial Court also held that the amendment will not change the cause of action or the nature of the suit. Aggrieved by the said order of the Court below in allowing the amendment petition, the 1st defendant has filed the present Civil Revision Petition.
- (6) The learned counsel for the revision petitioner/1st defendant submitted that the petition for amendment was allowed by the Trial Court without considering the admitted facts and the stand taken by the defendants in the written statement. Learned counsel pointed



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out that the defendants have specifically pleaded that there was no well. Since the new prayer introduced by way of amendment relates to a well which does not exist, the learned counsel submitted that the amendment is improper and cannot be allowed. The learned counsel also submitted that the plaintiff/1st respondent herein has filed proof affidavit before the Court below long after 28.01.2018 wherein he has not stated anything about the closure of the well by the defendants. Since the proof affidavit will demolish the case of the plaintiff/1st respondent in the amendment petition, the learned counsel submitted that the Trial Court ought not to have allowed the said amendment.

- (7) It is to be noted that the plaintiff/1st respondent has prayed for an order of injunction restraining the defendants from closing the well. Therefore, the plaint proceeds on the basis of an existing well. The question whether the well is in existence or not, is the matter in issue and it will be resolved only at the time of trial. Even for grant of a mandatory injunction, the Court may have to frame an issue and can grant relief only if the plaintiff/1st respondent is



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able to establish the existence of a well.

(8) The second point addressed by the learned counsel for the revision petitioner/1st defendant is a favourable circumstance to disprove the case of the plaintiff/1st respondent herein. However, this Court cannot prejudge the issue at the stage of amendment. It is open to the revision petitioner/1st defendant to establish the falsity of the case pleaded by the plaintiff/1st respondent herein at the time of trial. As pointed out by the Trial Court, the amendment is on the basis of something that had happened according to the plaintiff/1st respondent herein after the suit. The amendment will not, in any way, change the character of the suit as such. Under such circumstances, this Court is unable to find any irregularity in the order allowing the amendment.

(9) In the result, the Civil Revision Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

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S.S.SUNDAR, J.,

AP

To

The District Munsif cum Judicial
Magistrate, Kodumudi.

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