

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.3443 of 2015
and
M.P.No.1 of 2015

Ramachandran ..Petitioner/Plaintiff

Vs.

Sampath

..Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal orders passed in I.A.No.54 of 2015 in O.S.No.153 of 2009 dated 22.04.2015 on the file of the court of District Munsif Court cum Judicial Magistrate, Kattumanar Koil and allow the said I.A by allowed this Civil Revision Petition.

For Petitioner : Mr.A.Muthukumar
For Respondent : No appearance

O R D E R

This Civil Revision Petition is directed as against the fair and decreetal order passed in I.A.No.54 of 2015 in O.S.No.153 of 2009 dated 22.04.2015 on the file of the court of District Munsif Court cum Judicial Magistrate, Kattumannarkoil, thereby dismissing the petition filed by the petitioner for amendment of the plaint to include the prayer of recovery of possession in respect of the suit schedule property.

2. The petitioner is the plaintiff, he filed a suit for bare injunction as against the respondent in respect of the suit property on the ground that the petitioner is the absolute owner of the property, while being so the respondent compelled the plaintiff to let out the property for cultivating. when the petitioner denied the request made by the respondent he attempted to trespass into the property. Hence, the petitioner is constrained to file a suit for injunction.

3. While pending suit, the respondent trespassed into the property and as such the petitioner was constrained to file a petition for amendment of plaint to include the alternative

relief of recovery of possession with the original prayer of permanent injunction as against the respondent herein.

4. The trial court dismissed the petition for the reason that though the respondent categorically avered in the written statement that his father and the respondent are cultivating the suit property for the past 50 years and they are in possession of the property, the petitioner did not take any steps to include the prayer of recovery of possession immediately after filing the written statement. When the suit is posted for cross examination of PW1 the present application was filed and as such dismissed.

5. The learned counsel for the petitioner would submit that the petitioner is the absolute owner of the suit property, in fact it is categorically admitted by the respondent in the written statement. Though the respondent avered in the written statement that he is in possession of the suit property and cultivating the suit property, no piece of evidence is produced to show that he is in possession of the suit property. While pending suit, the respondent trespassed into the suit property, as such the petitioner filed petition for amendment to include the alternative prayer of recovery of possession in respect of the suit property.

6. In support of his contention, he relied upon the judgment in *Rajesh Kumar Aggarwal and others vs. K.K.Modi and others* reported in 2006 (3) MLJ 70 SC, wherein, the Hon'ble Supreme Court has observed as follows:-

15. This rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should 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 for which amendment is sought before the commencement of the trial.

16. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the

other side.

17. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

18. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

20. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

7. The Hon'ble Supreme Court of India held that since the cause of action arose during pendency of the suit, the amendment ought to have been granted because the basic structure of the suit has not changed and there was merely a change in the relief claimed. In the case on hand, the original suit was filed for injunction against the respondent herein. Pending suit the respondent trespassed into the property and as such the cause of action arose during the pendency of the suit the petitioner filed amendment petition with an alternative prayer of recovery of possession. It would not change the basic structure of the suit.

8. Therefore, the order passed by the court below is perverse and is liable to be set aside. Accordingly, the fair and decreetal order made in I.A.No.54 of 2015 in O.S.No.153 of 2009 dated 22.04.2015 on the file of the court of District

Munsif Court cum Judicial Magistrate, Kattumanar Koil is set aside and the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/
Sub Asst. Registrar

dsa

To

The District Munsif Court cum Judicial Magistrate,
Kattumanar Koil.

+1 cc to Mr.A.Muthukumar Advocate sr1390

C.R.P. (PD) .No.3443 of 2015

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