

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.2403 of 2016

and

C.M.P.No.12411 of 2016

N.Lingappan

... Petitioner/Petitioner /Appellant

Vs.

1.S.Nachiappa gounder (Died)

2.N.Velusamy

... Respondents/ Respondents/Respondents

(sole Petitioner and 2nd respondent L.Rs of the deceased R1 Viz S.Nachiaapa Gounder as per the memo dt.05.12.2018 (presented in Court) vide Court order dated 30.01.2019)

PRAYER : The Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and final order passed in I.A.No.59 of 2015 in A.S.No.22 of 2015 on the file of the I Addl. Sub. Judge of Erode, dated 04.02.2016.

For Petitioner : Mr.S.Parthasarathy. Senior Counsel
for M/S.V.S.Kesavan.

For Respondents : No appearance

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been arisen out of the order of dismissal passed by the learned First Additional Sub Judge, Erode, dated 04.02.2016 on the petition filed under Order 6 Rule 17 CPC.

2. Heard the arguments advanced by the learned senior counsel for the petitioner. During the pendency of the revision petition, R1 died and the petitioner and the second respondent are recorded as the LR's of the deceased

R1. Despite notice served on R2, no one appeared for the 2nd respondent.

3. The petitioner was the plaintiff and he has filed a suit for bare injunction against the defendants and the same was dismissed. Aggrieved over that, the petitioner, who was the plaintiff in the suit, has filed an appeal before the First Additional Sub Court, Erode. When the said appeal was filed, the petitioner has also filed a petition to amend the suit for including the prayer for declaration. The learned First Appellate Court dismissed the amendment petition. And the petitioner has challenged the said order by filing this Civil Revision Petition.

4. Mr.S.Parthsarathy, learned senior counsel for the petitioner submitted that the petition filed for amendment filed by the petitioner is to include the relief of declaration and that will not change the character of the suit and further that the Appeal is only a continuation of suit and hence the First Appellate Court ought to have considered the application for amendment and allowed it.

5. On perusal of the records, it is seen that even while the suit was pending before the trial Court, the defendant has raised a plea that the suit is not maintainable without a prayer for declaration. Since the respondent disputes the title the suit filed for bare injunction is not maintainable.

6. The judgment of the trial Court was passed only after a full pledged trial and the plaintiff has all along participated in the trial. Time waited until the suit was dismissed and noted from the discussion on the judgment of the trial Court, the petitioner has filed the petition for amending the very relief itself.

7. Despite, the petitioner has not taken any steps to amend the plaint when the suit was pending before the trial court. Only after the suit was dismissed on merits and seeing the reasons for dismissal the petitioner had opted to file the amendment petition before the first Appellate court. In such situation it cannot be taken that the amendment sought by the petitioner for a different relief does not change the character of the suit. It would definitely change the character of the suit from a suit for bare injunction to a suit for declaration and permanent injunction.

8. Since the petitioner attempted to introduce a new case before the Appellate Court and to cure the reasons on which he lost the case, the learned first

Appellate court has rightly dismissed the same by observing that the proposed amendment sought by the petitioner at the appellate stage would change the very character of the suit.

Hence, I find no factual or legal infirmity in the order of the Trial Judge in dismissing the petition. Hence, this Civil Revision petition is **dismissed** and the order of the trial Court is confirmed. No costs. Consequently, connected Civil Miscellaneous Petition in C.M.P.No.12411 of 2016 is also closed.

24.06.2021

Speaking/Non-speaking
Index : Yes/No
Internet : Yes/No

jrs

To

1.The First Additional Sub Judge, Erode.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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and
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