

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.12.2020

Delivered on: 20.01.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRP.(PD).No.4215 of 2014

and

MP.No.1 of 2014

S.A.Elango Vethantham

...Petitioner

Vs.

1.Visalatchi

2.Sathishrajulu

3.Manohorajulu

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order in I.A.No.698 of 2014 in O.S.No.41 of 2012, dated 17.10.2014 on the file of the Subordinate Judge, Hosur, Krishnagiri District.

For Petitioner : Mr.V.Lakshminarayanan

**For Respondents : R1- No appearance
Mr.A.R.Nixon for R2 & R3**

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of his application in I.A.No.698 of 2014 in O.S.No.41 of 2012 on the file of the Sub-Judge, Hosur, dated 17.10.2014.

2. The petitioner herein had filed an application in I.A.No.698 of 2014 in O.S.No.41 of 2012 on the file of the Sub-Judge, Hosur, under Order 6 Rule 17 of CPC, seeking permission of the Court to amend the plaint as mentioned in the petition. The learned Sub-Judge, Hosur, by the order dated 17.10.2014 had dismissed the said application. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3. Heard, Mr.V.Lakshminarayanan, the learned counsel for the petitioner/plaintiff and Mr.A.R.Nixon, the learned counsel for the respondents 2 & 3/defendants 2 & 3.

4. The learned counsel for the petitioner has submitted that the petitioner herein had filed a suit in O.S.No.41 of 2012 on the file of the Sub-Judge, Hosur, to declare his title over the suit property and for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. He further submitted that during pendency of the suit, an Advocate Commissioner was appointed and the said Advocate Commissioner had inspected the suit property and measured the same and filed a report stating that a portion of the property has been encroached by the respondents/defendants and accordingly, the petitioner herein had filed an application in I.A.No.648 of 2012 seeking leave of the Court to amend the plaint to incorporate the relief of mandatory injunction to remove the encroached portion and hand over the vacant possession of the said property and the said application was allowed and accordingly the plaint was amended incorporating the relief of mandatory injunction to remove the super structure put up in the suit property and for delivery of vacant possession but, unfortunately, the petitioner

failed to amend the extent of the encroached portion in the plaint schedule and hence, the petitioner had filed another application in I.A.No.698 of 2014 seeking leave of the Court to amend the plaint schedule but, the learned Sub-Judge, Hosur, had dismissed the said application and hence, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned Sub-Judge, Hosur, in I.A.No.698 of 2014 and allow the said application.

5. Per contra, the learned counsel for the respondents 2 and 3 has submitted that already the trial has commenced and the petitioner herein had examined himself as PW1 and thereafter, the Advocate Commissioner was examined as PW2 and the Village Administrative Officer was examined as PW3 and one more witness was examined as PW4. He further submitted that after closing of the plaintiff's side evidence, the defendants filed a memo stating that they have no oral evidence on their side, the matter was posted for arguments and at that stage, the petitioner herein/plaintiff had filed an application seeking

permission of the Court to amend the plaint schedule. He further submitted that as per the proviso to Order 6 Rule 17 of CPC, after commencement of the trial, the parties cannot amend the pleadings and taking into consideration the aforesaid facts, the trial Court had rightly dismissed the application and in the said order, this Court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

6. A perusal of the typed set of papers filed by the petitioner shows that the petitioner herein had filed a suit in O.S.No.41 of 2012 on the file of the Sub-Judge, Hosur, to declare his title over the suit property and for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. During pendency of the said suit, an Advocate Commissioner was appointed. The said Commissioner had inspected the suit property and measured the same and filed a report stating that a portion of the property has been encroached by the defendants and a construction has

been put up. Thereafter, the petitioner herein had filed an application in I.A.No.648 of 2012 seeking leave of the Court to amend the plaint schedule to incorporate the relief of mandatory injunction to remove the super structure which was put up by the defendants by encroaching the suit property and for delivery of vacant possession and the same was allowed. Accordingly, the petitioner amended the plaint incorporating the relief of mandatory injunction to remove the super structure which was said to have been constructed by the defendants by encroaching a portion of the suit property but, correspondingly no amendment has been made in the plaint schedule to show the extent of the property encroached by the defendants.

7. Since already the trial Court had allowed the petition to amend the plaint schedule incorporating the mandatory injunction to remove the super structure said to have been made by the defendants by encroaching a portion of the suit property, the amendment now sought for is only a continuance of the amendment which was allowed by the

trial Court in I.A.No.648 of 2012. Therefore, by allowing the said amendment, no prejudice would be caused to the respondents. But without considering the said facts, the trial Court had dismissed the application and hence, the said order is liable to be set aside.

8. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed. The order passed by the learned Sub-Judge, Hosur, in I.A.No.698 of 2014 dated 17.10.2014 is set aside. I.A.No.698 of 2014 in O.S.No.41 of 2012 is allowed.

20.01.2021

Index : Yes/No

Internet : Yes/No

dna

To

The Sub-Court, Hosur.

CRP.(PD)No.4215 of 2014

P.RAJAMANICKAM.J.,

dna



**Pre-Delivery Order in
CRP.(PD).No.4215 of 2014
and
MP.No.1 of 2014**

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