

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD)No.3604 of 2018
and C.M.P.No.20148 of 2018

O.P.Ravindran

...Petitioner

Vs

1.M.S.Subbaiah

2.S.Damodaran

... Respondents

Prayer Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the order dated 12.12.2018 made in I.A.No.1228 of 2017 in O.S.No.568 of 2006 on the file of the Additional District Munsif Court, Alandur.

For Petitioner : Mr.Vijay.B

For Respondents : Mr.R.Udayakumar
for Mr.T.Ramachandran

ORDER

This Civil Revision Petition has been filed challenging the order dated 12.12.2018 made in I.A.No.1228 of 2017 in O.S.No.568 of 2006 on the file of the Additional District Munsif Court, Alandur.

2.I.A.No.1228 of 2017 was filed by the petitioner/plaintiff for the purpose of amending the plaint. The contention of the Revision Petitioner is that originally in the plaint he has stated that there was an encroachment to the extent of 300 sq.ft in the suit schedule property. Subsequently, the Court appointed the Advocate Commissioner at plaintiff's request to measure and note down the physical features of the suit schedule property on 17.12.2012. The Advocate Commissioner's report reflects that the entire property of 2400 sq.ft is under the occupation of the respondent herein. Therefore, he filed the I.A.No.1228 of 2017 to amend the plaint by incorporating the extent of encroachment as 2400 sq.ft instead of 300 sq.ft. The Court below after hearing the parties has dismissed the application stating that the suit is pending for defendant's side evidence and allowing the said application will change the nature and character of the suit. Aggrieved by the same, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioner submitted that in the suit the plaintiff's side evidence was completed and the suit is pending for the defendant's side evidence. The Court below had dismissed the said I.A., stating

that the application for amendment was moved after five years from the filing of Advocate Commissioner's report and in the post-trial stage. It is the settled law that the amendment cannot be denied on the basis that the application has been filed in the belated stage. In support of his contention, the learned counsel relied on the judgment of the Hon'ble Apex Court in the case of ***Surendar Kumar Sharma v. Makhan Singh*** reported in (2009) 10 SCC 626. As far as the reason stated by the Court below for dismissing the application that it has been preferred at the post-trial stage, the learned counsel referred the judgment of the Hon'ble Apex Court in the case of ***Abdul Rehman and another v. Mohd. Ruldu and others*** reported in (2012) 11 SCC 341.

4.The learned counsel for the petitioner further submitted that in the present case at the time of filing the suit the petitioner only knew that the encroachment was to the extent of 300sq.ft. Subsequent to the filing of Advocate Commissioner's report, the petitioner came to know that the respondent has encroached the entire suit schedule property to the extent of 2400 sq.ft. Due to his avocation the petitioner left to Kerala, therefore he was not aware of the extent of encroachment. Further, if the amendment with regard

to the post suit encroachment is not permitted the petitioner has to file a fresh suit, which leads to multiplicity of legal proceedings. In order to avoid the multiplicity of legal proceedings, the application for amendment was sought but it was not allowed. Therefore, he prayed to set aside the order passed by the Court below. He further submitted that the petitioner is ready and willing to pay the additional Court Fee, if any, after the amendment of the plaint and in case, by virtue of valuation of the suit, if the case needs to be transferred to concerned jurisdictional Court, the same may be done in accordance with law.

5.Per Contra, the learned counsel appearing for the respondents submitted that the alleged encroachment is of 2400 sq.ft. The petitioner had purchased a plot and he is in the absolute possession and enjoyment of the property over a period of 17 years and he had already constructed a building in the plot, even at the time of construction the alleged encroachment is in existence. According to the first respondent, he constructed the building only in his property. Therefore, he contended that the petitioner/plaintiff has filed the I.A.No.1228 of 2017 for amending the plaint by suppressing the material fact and hence, the Court below dismissed the said application.

6.The learned counsel for the respondents further submitted that the Advocate Commissioner has filed the report stating that there is an encroachment to the extent of 2400 sq.ft. Therefore, the petitioner has filed an application for amendment of the prayer. After all he can only ask for the amendment of the prayer. The petitioner cannot claim any right over the property, since the court has to adjudicate the issue whether the encroachment is of 2400 sq.ft. or 300 sq.ft. or there is no encroachment at all? The petitioner is not entitled to file another suit and it is for the court below to decide all the issues.

7.Further, the learned counsel for the respondents submitted that the suit is pending at the stage of defendant's side evidence and the amendment cannot be made at the post-trial stage. The petitioner has filed the application for amendment after the period of five years from the date of filing the Advocate Commissioner's report. The petitioner has not given proper reason for such a huge delay. Further, allowing the amendment application will change the nature and basic structure of the suit. The Court below considering all these aspect has

rightly dismissed the application, which does not warrant any interference.

8.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

9.Upon hearing and perusal of the order passed by the Court below, it appears that the petitioner had filed an application before the Court below to amend the extent of the encroachment as 2400 sq.ft in the plaint instead of 300 sq.ft. According to the petitioner, at the time of filing the suit, the encroachment was only to the extent of 300 sq.ft and after the filing of Advocate Commissioner's report, the petitioner came to know that the respondent has encroached the entire suit schedule property to the extent of 2400 sq.ft. The Advocate Commissioner in his report has stated that the above said 2400 sq.ft. is in the possession of the respondents/defendants. But according to the respondents, it is their property and the question of encroachment does not arise at all. Therefore, even the respondent is questioning about the Advocate Commissioner's report. But it appears that so far no objection has been filed for the Advocate Commissioner's report. The

learned counsel for the petitioner submitted that the building was constructed in the Plot Nos.113, 114 and 115. Whereas, in the Advocate Commissioner filed a report stating that there is a building in Plot No.115. Whether the building is constructed in Plot No.113 or 114 or 115 or not can be decided before the trial court. If the parties have any grievance in the report, it is for them to approach the court below. Now, the issue to be decided is as to whether the belated and post-trial amendment is permissible.

10. Before going into the issue, it would be appropriate to extract Order 6 Rule 7 of the Code of Civil Procedure, which is reproduced hereunder:

“17. Amendment of Pleadings:- *The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall 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 before the commencement of trial.”

11.As far as the delay in amendment application is concerned, the Revision Petitioner came to know about the encroachment by the respondent to the extent of 2000 sq.ft. only after filing of the Advocate Commissioner's report. The petitioner was away from the home town due to his avocation. Therefore, he was not aware about the exact encroachment. The Courts are not powerless to permit the amendment if it is satisfied with the reason assigned by the parties for approaching the Court at the belated stage.

12.In the present case, admittedly the amendment was sought to be made in the post-trial stage. The Court has to examine with regard to the genuinity of the amendment sought, whereas, the Court below simply dismissed the application stating that the amendment will change the basic structure of the suit. Apart from the said reason the Court has not assigned any other reason to decline the amendment and the Court has not taken any approach with regard to the multiplicity of the Courts proceedings. The Court below has to look into the aspect of entitlement of the petitioner to file a fresh suit in the event of declining the amendment. Obviously, in the present case, if the amendment is

not considered, the petitioner is entitled to file a fresh suit. In such circumstances, the Court below should have allowed the application instead of relegating the petitioner to file a fresh suit. If the Court below had applied its mind in a proper manner, it would have arrived a logical conclusion, it has miserably failed to arrive such any logical findings.

13.The Hon'ble Apex Court in the case of ***Surendar Kumar Sharma v. Makhan Singh*** reported in ***(2009) 10 SCC 626***, has stated that the belated application for amendment of the plaint cannot be refused, if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs.

14.From the above reading, it is clear that the parties to the suit can be permitted to bring forward the amendment pleadings at any stage for the purpose of determining the real question of controversy between the parties. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial and in that event of post-trial, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have

raised the matter before the commencement of trial. Therefore, the rejection of the application on the ground that the application was filed after the commencement of trial, without any proper reason, is unsustainable.

15.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. The main purpose of allowing the amendments is to minimise the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. As far as this case is concerned, as stated earlier the Court below has not considered the very point of multiplicity of litigation and the petitioner's entitlement for filing a fresh suit. If the Court below applied its mind, it would have come to the logical conclusion that the amendment should be allowed due to the reason atleast to avoid the multiplicity of the legal proceedings.

16.As far as the post-trial amendment is concerned, this Court is of the view that the parties can be permitted to amend their pleadings at any stage with the leave of the Court provided the amendment proposed is bonafied, relevant and necessary for deciding the rights of the parties involved in the lis.

17.In the present case, the application for amendment has been filed after the commencement of the trial and the mere commencement of the trial is not a bar for the Revision Petitioner to make any amendment. The finding of the Court below is that the amendment will change the nature and structure of the suit. The said reason alone is not sufficient to dismiss the amendment application. The Court below failed to consider the aspect of multiplicity of legal proceedings and petitioner's entitlement to file the fresh suit. If this aspect was considered, the Court below would have given different finding. The Court below simply came to the conclusion that the structure of the suit will change. This Court unable to trace any reason to substantiate such illogical finding. Thus, this Court is of the opinion that the structure of the suit will not get altered by the proposed amendment. When such being the position, the Court below ought not to have dismissed the application, for amendment.

18.In view of the above, this Court is inclined to dispose of this Civil Revision Petition. The Court below is directed to permit the petitioner to amend the prayer. However, liberty is granted for the respondents to file an additional written statement, if so desired. The learned counsel appearing for the respondents submitted that the additional written statement is to be filed along with the counter claim. This Court feels that it is upon to him to file it or not.

19.With the above observation, this Civil Revision Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

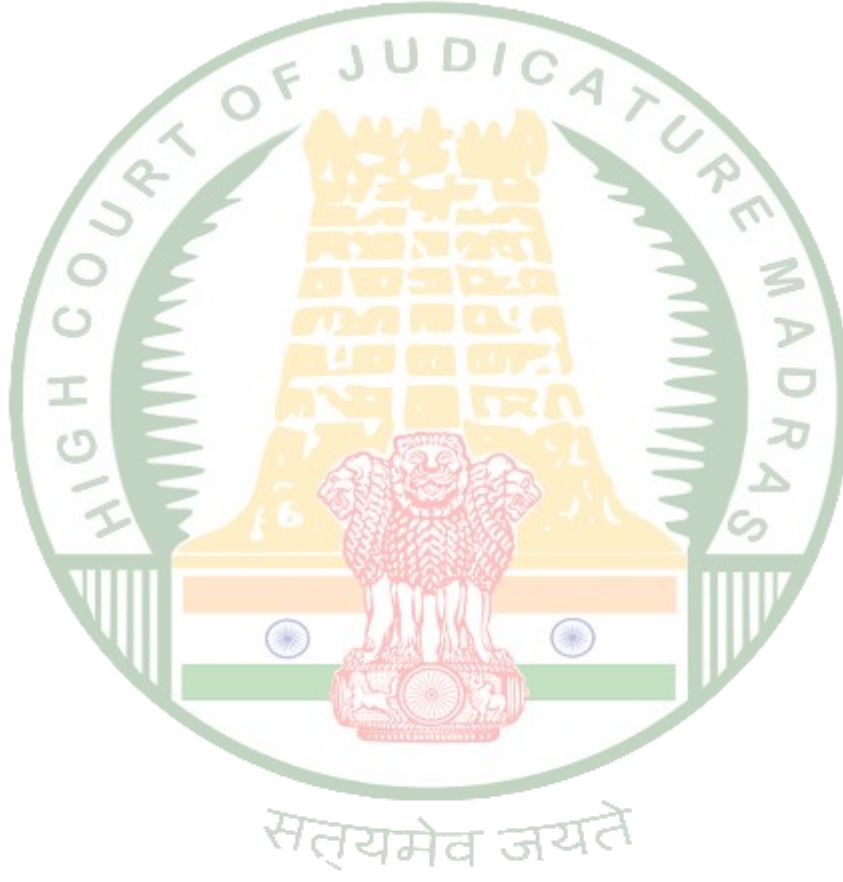
11.03.2021

Index: Yes
Internet: Yes
Speaking order

rst

To:

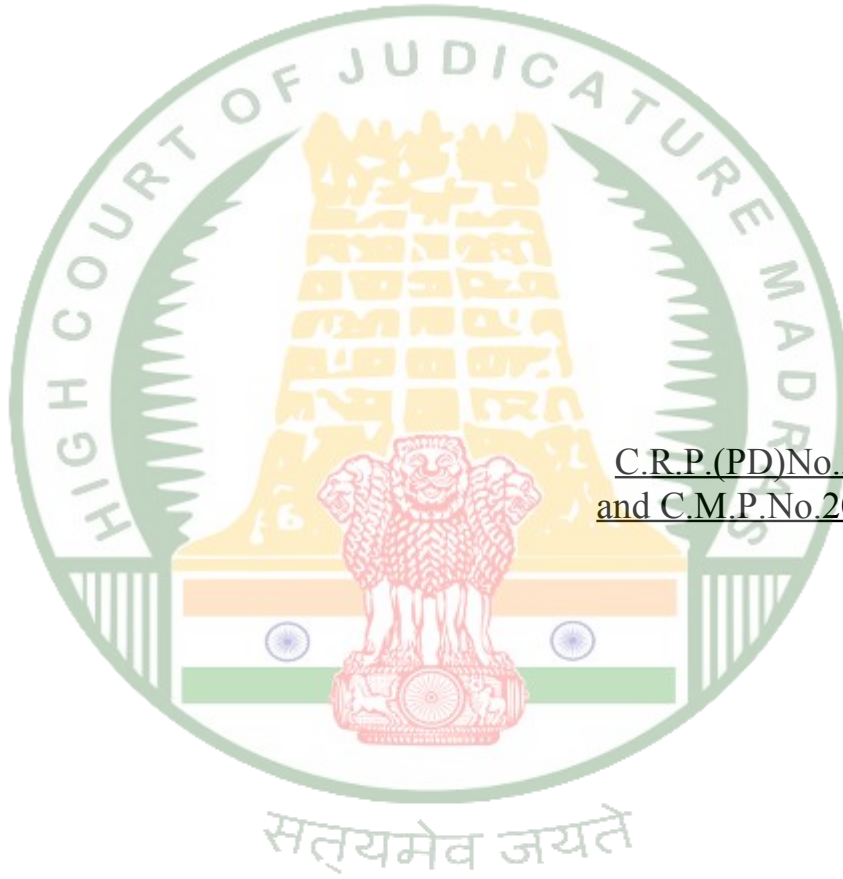
The Additional District Munsif Court,
Alandur.



WEB COPY

KRISHNAN RAMASAMY,J.

rst



C.R.P.(PD)No.3604 of 2018
and C.M.P.No.20148 of 2018

WEB COPY

11.03.2021