

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.R.P (PD).No.4269 of 2018
and
Cmp.No.23403 of 2018

Deivayanai ... Petitioner/Plaintiff/Petitioner

Versus

Savithiri ... Respondent/Defendant/Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India pleased, to set aside the fair and decretal order dated 22.11.2018 passed in I.A.No.1374 of 2018 in O.S.No.218 of 2013 on the file of the learned District Munsif, Sirkali.

For Petitioner : Mr.S.Kingston Jerold
For Respondent : No Appearance

ORDER

Challenging the order dated 22.11.2018 passed in I.A.No.1374 of 2018 in O.S.No.218 of 2013 on the file of the learned District Munsif, Sirkali, the Civil Revision petition is filed.

2.Though notice was ordered to the respondent, even after service of notice and name was also printed in the cause list, when the matter is called today, none appeared for the respondent. Therefore, this Court proceeds to hear the petitioner and to pass the following order in the revision petition.

3.Heard the learned counsel for the petitioner and perused the materials available on record.

4.It is the case of the revision petitioner that he has filed an amendment application in I.A.No.1374 of 2018 in O.S.No.218 of 2013, under Order VI Rule 17 r/w 151 of CPC., before the District Munsif, Sirkali, for the additional relief of recovery of possession. The suit was filed for permanent injunction restraining the peaceful possession and enjoyment of the plaintiff. Pending the suit, the respondent herein encroached a portion of the suit property by way of constructions, therefore, he filed an amendment application to add the prayer

for removal of the construction and recovery of possession. Now, the suit is posted under the Special list and taken on file. At this stage, the revision petitioner proceeded to file an amendment application, therefore, the Court below has come to the conclusion that only for the purpose to drag on the proceedings, the application has been filed. Hence, the said application for amendment was dismissed.

5. Upon hearing and on a perusal of the documents, the suit was filed for bare injunction. The revision petitioner filed an application for amendment of plaint to add the prayer for recovery of possession. The contention of the revision petitioner is that the pending the suit, the respondent herein encroached into the suit property, therefore, he wants to amend the plaint.

6. Obviously, the plaintiff is entitled to make an amendment before the commencement of the trial and any such amendment at the stage of pre-trial is permissible. At this juncture, this Court feels that it would be appropriate to extract the Order VI Rule 17 of the Civil Procedure Code hereunder:-

"Amendment of pleadings: The court may at any stage of the proceedings allow either party to alter or amend his pleadings 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."

7. On a perusal of Order VI Rule 17 of Civil Procedure Code, it is clear that the Court can, at any stage, allow the alteration of pleadings in such manner, as it may think that such amendment is necessary to determine the controversy between the parties. However, no application shall be allowed, after commencement of the trial, unless, in spite of due diligence of the party, such amendment could not be brought at the earliest point of time. Therefore, it is clear that there is no restriction to file the application for amendment before the commencement of the trial.

8. Even after the commencement of trial, if an application is filed, the Court has to satisfy with the reason for filing of amendment application before the commencement of trial. Obviously, the revision petitioner filed the application for amendment, stating that subsequent to the filing of the suit, the

defendant encroached the suit property and that is the reason why he has filed the amendment application, after the commencement of trial. Even assuming that if the amendment application is not allowed, the revision petitioner is entitled to file a suit for recovery of possession by way of separate suit but, it will lead to multiplicity of legal proceedings. In order to avoid such multiplicity of legal proceedings, the Court below, while passing the order, should have considered all these aspects. This Court could find that there is a valid reason was assigned by the petitioner for filing the petition for amendment. While dealing with the application for amendment, the Court below has failed to see the aspect of multiplicity of legal proceedings but, this aspect should have been considered by the Court below.

9.The Court below dismissed the application for amendment only on the ground that the matter was posted under special list. In the present case, this Court is of the view that the amendment sought for recovery of possession is necessary, since the respondent herein said to have encroached the suit property, during the pendency of the suit. Since the matter is already pending, he can file by way of a petition for amendment, otherwise, he has to file a separate suit which will only lead to multiplicity of legal proceedings, which will waste the time of the Court. Therefore, this Court is of the view that the dismissal of the application for amendment is not fair and it is to be set aside. Accordingly, the order of the Court below is set aside and it is directed to permit the revision petitioner to carry out the amendment in the plaint, as per law. The Court below shall permit the respondent to file an additional written statement, if so advised, and if necessary shall frame additional issues and decide the suit on merit.

10.With the above observation and direction, the Civil Revision Petition is allowed by setting aside the order dated 22.11.2018 passed in I.A.No.1374 of 2018 in O.S.No.218 of 2013 on the file of the learned District Munsif, Sirkali. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

klt

To

The District Munsif, Sirkali.

+1cc to MR.S.KINGSTON JEROLD, ADVOCATE, SR.NO. 15278

C.R.P (PD) .No.4269 of 2018
and
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KKN 23.04.2021



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