



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.R.P.(MD)No.1502 of 2014

and

M.P.(MD)No.1 of 2014

O.Ramasamy @ Raja

: Petitioner/Defendant

Vs.

1.G.Renuka

2.S.Chennakrishnan

: Respondents/Plaintiffs

PRAYER:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order, dated 12.06.2014 made in I.A.No.479 of 2012 in O.S.No.35 of 2011 on the file of the District Munsif Court, Periyakulam.

For Petitioner
For Respondents

:Mr.Vijayakumar for Mr.R.Gandhi
:Mr.K.Hema Karthikeyan

ORDER

The challenge in this revision is to an order allowing to amendment of the plaint in I.A.No.479 of 2012 in O.S.No.35 of 2011 at the instance of the defendant in the suit.

2.The plaintiffs sued for declaration, permanent injunction and mandatory injunction for removal of fence. A Commissioner, who visited the property, filed his report. After the filing of the report, the plaintiffs came up with an application seeking amendment of the plaint to amend the relief of mandatory injunction to remove the wall, contending that after the filing of the suit, the defendant had converted the fence into a wall.

3.The said application was resisted by the defendant contending that the wall was put up almost four years prior to the filing of the suit and therefore, the relief sought for by way of amendment is clearly barred by limitation. There was another prayer for amendment to rearrange the relief sought for in the plaint. The trial Court rejected the defence and allowed the both amendments sought for. Aggrieved, the defendant has come up with this revision.



4.I have heard Mr.Vijayakumar, learned Counsel for the petitioner and Mr.K.Hema Karthikeyan, learned Counsel for the respondents.

5.Mr.Vijayakumar, learned Counsel for the petitioner would fairly concede that as regards the request for rearranging the reliefs sought for in the prayer-B, he cannot have any objection. As regards the prayer for mandatory injunction, Mr.Vijayakumar, learned Counsel for the petitioner would submit that the trial Court was not right in deciding the question of limitation, while deciding the application for amendment. According to him, the trial Court ought not to have pronounced upon the question of limitation at this juncture and it should have reserved it to be decided after trial.

6.Mr.K.Hema Karthikeyan, learned Counsel for the respondents would submit that there is enough material to show that the wall was constructed after the suit and therefore, the trial Court was right in concluding that the amendment sought for is within the period of limitation.

7.I have considered the rival submissions.

8.The Trial Court was called upon to decide only an application for amendment. While deciding an application for amendment of the plaint, the Court has to confine itself to the scope of the amendment, ie., as to whether the amendment changes the nature or character of the suit or that it would introduce a new cause of action. The question of limitation must always be relegated, as it is a mixed question of fact and law to be decided on evidence. The Court should not run the risk of deciding the question of limitation in the absence of evidence. I am, therefore, clearly of the opinion that the trial Court erred in deciding that the relief of mandatory injunction sought to be introduced is within time without recording any evidence. Hence, I am compelled to interfere with the order of the trial Court.

9.The finding of the trial Court that the relief of mandatory injunction sought for is not barred by limitation is set aside. The amendment sought for is allowed subject to the liberty to the defendant to raise the question of limitation at the time of trial and the trial Court shall decide the same afresh without being influenced by any of the observations made either in this order or in the order impugned in this revision. It is needless to point out that the defendant will have a liberty to file an additional written statement, if so advised.



10.The revision is disposed of, as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

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Sub Assistant Registrar(CS)

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To

1.The District Munsif Court, Periyakulam.

2.The Section Officer,V.R.Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.K.HEMAKARTHIKEYAN, Advocate (SR-5301[F] dated 16/02/2021)

+1 CC to M/s.R.GANDHI, Advocate (SR-5455[F] dated 16/02/2021)

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PM(CO)

TR(24.02.2021) 3P 6C