



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.04.2021

PRONOUNCED ON : 17.04.2021

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CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP (MD) No.1771 of 2014

MP (MD) .No.1 of 2014 and CMP (MD) .No.5501 of 2020

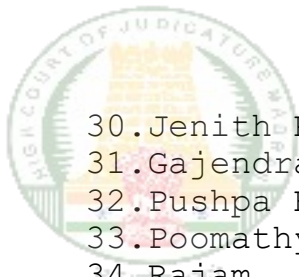
(Through Video Conferencing)

Nesamony

Petitioner

Vs

- 1.Ponnayyan Nadar
- 2.Kochukuttan (died)
- 3.Podipillai
- 4.Paul Thangam
- 5.Saraswathi
- 6.Sivaraj
- 7.Thanga Nadar
- 8.Selvaraj
- 9.Vijayal
- Rosily (Died)
- Eswaradas (Died)
- 10.Ganesan (died)
- 11.Chellathurai
- 12.Valsalam
- 13.Robinson
- 14.Alexander
- 15.Stella Mary
- 16.Sujatha Mary
- 17.Lalitha
- 18.Suresh Kumar
- 19.Sri Sayila
- 20.Sri Sheela
- 21.Thiresa
- 22.Anitha
- 23.Alwin
- 24.Ingil
- 25.Rethinam
- 26.Gokulraj
- 27.Deepa
- 28.Geetha
- 29.Thangabai



30.Jenith Kumar
31.Gajendran
32.Pushpa Bai
33.Poomathy
34.Rajam
35.Kala
36. Sundari
37.Rajesh Bose
38.Preetha Rathi

... Respondents

(RR29 to 35 are brought on record as LR's of the deceased R2 vide court order dated 08.01.2021 in CMP(MD)Nos.3126 to 3128 of 2017 in CRP(MD)No.1771 of 2014)

(RR36 to 38 are brought on record as LR's of the Deceased R10 vide court order dated 19.02.2021 made in CMP(MD)No.11655 of 2017 in CRP(MD)No.1771 of 2014)

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 5.7.2014, passed in IA.No.368 of 2014 in OS.No.32 of 1980, by the I Additional District Munsif, Kuzhithurai.

For Petitioner : Ms.J.Anandhavalli

For Respondent : Mr.P.Thiagarajan-RR3 to 14, RR16 to 24
and RR29 to 35
RR1,2,10 - Died
RR15,36 to 38 - NA
RR 25 to 28 - Exparte

ORDER

1.This Civil Revision Petition has been filed, to set aside the fair and decreetal order, dated 5.7.2014, passed in IA.No.368 of 2014 in OS.No.32 of 1980, by the I Additional District Munsif, Kuzhithurai.

2.The facts of the case, in a nutshell, are that the Petitioner herein is the Plaintiff and the Respondents are the Defendants in the suit. The suit was filed for declaration of title and for injunction. The suit was decreed by the judgement and decree, dated 14.07.1995 and the appeal filed against the same was dismissed, confirming the judgement and decree of the Trial Court, by judgement and decree, dated 23.12.1996. The second appeal filed before this Court was allowed, by judgement and decree dated 14.12.2011, in and by which, the suit was remanded back to the Trial Court for fresh trial. After remand, an Advocate Commissioner was appointed and he had also filed a report and plan. At this juncture, the Plaintiff had filed the present application in IA.No.368 of 2014, seeking to amend the plaint, by including a prayer for recovery of possession of certain portion of the property, alleging that the said portion



was encroached upon by the Defendants, during the pendency of the second appeal. Since the said application was dismissed by the impugned order, this Civil Revision Petition has been filed by the Plaintiff.

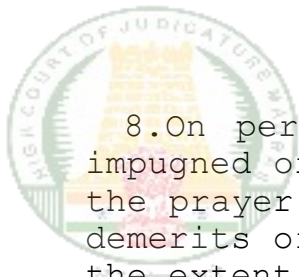
3.The learned counsel for the Petitioner has submitted that since there were subsequent changes taken place in the suit property and the Defendants had encroached upon the suit property and occupied some portion, during the pendency of the second appeal, in order to recover the same, the amendment sought is absolutely necessary and that if the amendment is not allowed, great prejudice would be caused to the Petitioner and that the court below erred in giving findings on merits of the case, while deciding the interim application, seeking amendment and in such circumstances, the impugned order is liable to be set aside and this Civil Revision Petition is to be allowed.

4.The learned counsel for the Respondents has submitted that at this distant point of time, the prayer for recovery of possession, by way of amendment, is barred by limitation and that only with a view to protract the proceedings and only to fill up the lacuna in the evidence, the application, seeking to amend the prayer in the suit, has been filed and hence, it is not permissible in law to allow the application, seeking to amend the prayer, at a belated stage and consequently, this Civil Revision Petition is to be dismissed.

5.This court heard the learned counsel on either side, considered their submissions and carefully perused the materials placed on record.

6.Originally, the suit was filed for declaration of title and injunction and it went up to the second appeal before this Court. In the second appeal, the suit was remanded back to the Trial Court for conducting a fresh trial. In the Trial Court, an Advocate Commissioner was appointed and his report and plan were taken on file. At this stage, the Plaintiff had sought to amend the prayer, by including a prayer for recovery of possession of certain portion of the property, alleging that the Defendants had trespassed into the property and encroached the same, during the pendency of the second appeal. Per contra, it was contended by the Defendants that the prayer for recovery of possession is barred by limitation and that only to protract the proceedings, the amendment is sought for. By the impugned order, the court below had dismissed the application, accepting the contention of the Defendants.

7.Now, it is to be decided as to whether the impugned order, denying to allow the amendment, passed by the court below, giving findings on merits and demerits, is sustainable or not.



8. On perusal of the records, it is seen that while passing the impugned order, dismissing the interim application, seeking to amend the prayer in the suit, the court below had gone into the merits and demerits of the prayer of the amendment application and also gone to the extent of giving a finding on the ground of limitation.

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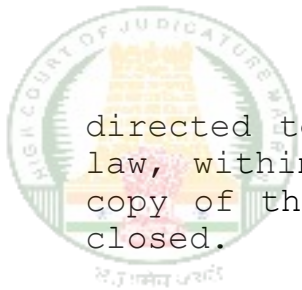
9. It is settled proposition of law that the Court, while deciding an interim application, seeking amendment, cannot go into the merits or otherwise of the claim of either side of the parties. In this case, when there is a specific allegation made by the Plaintiff that during the pendency of the second appeal, there was an encroachment upon certain portion of the suit property by the Defendants, it is for the Plaintiff to establish the same, by letting in valid evidence in the trial and equally, it is also open to the Defendants to resist the same, raising all grounds, including the ground of limitation in respect of the prayer for possession. But, it is not for the Trial Court to decide the present interim application on merits and demerits of the case. In such view of the matter, the Trial Court had erred in dismissing the application, by the impugned order, giving findings on merits and demerits.

10. As per Order 6 Rule 17 of CPC, the Court is empowered to allow either party to alter or amend his pleadings, at any stage of the proceedings and such amendment shall be made for the purpose of determining the real controversies raised between the parties. A wide and discretionary power has been conferred on the court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the court just and proper.

11. In this case, it is alleged that during the pendency of the second appeal, some encroachment came to be created by the Defendants in respect of the suit property. Hence, the amendment sought for by the Plaintiff is necessary to determine the controversy between the parties and for effective adjudication of the case.

12. When the amendments are sought for determination of the real questions in controversy between the parties, such amendments ought to be allowed. Further, in order to avoid multiplicity of proceedings and for proper and effective adjudication of the case and in order to bring out the truth, by way of a full fledged trial, it would be a sound exercise of discretion to permit the amendment sought for. The dominant purpose of allowing the amendment is to minimise the litigation. In such view of the matter, in this case, the amendment as sought for by the Plaintiff ought to have been allowed by the court below and hence, refusing to do so warrants interference by this Court.

13. With the above directions, this Civil Revision Petition is allowed. Since the suit is of the year 1980, the Trial Court is



directed to dispose of the suit, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected MPs are closed.

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Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Srcm

To

The I Additional District Munsif, Kuzhithurai

Copy to

The Registrar Judicial,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.J.ANANDAVALLI, Advocate (SR-16167[F] dated 17/04/2021)

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-16350[F] dated 19/04/2021)

Order in
CRP (MD)No.1771 of 2014

SVN(CO)

TR(06.05.2021) 5P 5C