



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10.03.2022
Pronounced on	22.03.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) No.1940 of 2016

K.Thangayammal

... Petitioner

Vs.

1. A.Duraisamy
2. D.Dhakshinamoorthy
3. Chinnappa Gounder
Chenniappa Gounder (died)
4. Ramasamy Gounder
5. Velumani
6. Easwaramoorthy
7. Prakash
8. Srinivasan
9. Sasi @ Gomathi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 15.03.2016 passed in I.A.No.111 of 2016 in O.S.No.92 of 2007 on the file of the II Additional District Munsif, Erode.



WEB COPY

C.R.P(PD)No.1940 of 2016



For Petitioner : Mr.A.Sundaravadhanam

For Respondents 1,2 & 7 : No Appearance

For Respondents 3 to 6, 8 & 9 : Mr.I.C.Vasudevan

ORDER

This Civil Revision Petition was filed challenging the fair and final order passed in I.A.No.111 of 2016 in O.S.No.92 of 2007 dated 15.03.2016 passed by the learned II Additional District Munsif, Erode.

2. The revision petitioner is the plaintiff in the suit in O.S.No.92 of 2007 which has been filed for:

a) granting a mandatory injunction directing the defendants 1 & 2 to remove the foundation wall constructed in the suit lane admeasuring 2-1/2 feet breadth and 95 feet length given in violet colour in the plaint plan within the time to specified by this Hon'ble Court and in default thereof the defendants, directing the same has to done by an office of this Hon'ble Court at the cost of the defendants;

b) granting a permanent injunction, restraining the defendants 1 & 2 and their men from putting up any construction on cause any obstructions or



interfering in any other manner with the plaintiff's peaceful possession and enjoyment of the suit lane;

c) directing the defendants to pay the cost of the suit to the plaintiff;

3. The learned counsel for the revision petitioner/plaintiff submitted that there exists a north-south common lane admeasuring 23 feet east-west and 215 north-south formed at the time of the said partition for access to the sharers. As per the said partition deed the width of the suit lane was 12 feet. The western owners viz., the defendants 3 to 9 left a width of 11 feet on their part totally 23 feet. The said common pathway is the subject matter of the suit and the same is referred as the suit property.

4. The learned counsel for the revision petitioner/plaintiff further submitted that the respondents/defendants vacant land is situated on the south of Perundurai Main Road as well as on the east of the suit property. The said suit property is common to the revision petitioner/plaintiff as well as the respondents/defendants and it is the only access to reach the house of the revision petitioner/plaintiff. The revision petitioner/plaintiff as co-owner of the common pathway, has got unfitted right of access and no body is entitled



to abstract or interfere with her right.

WEB COPY

5. Moreover, the respondents/defendants filed the written statement in the year September 2007, in which the respondents/defendants 3 & 5 to 10 contended that the revision petitioner/plaintiff has no right in the suit lane.

6. In view of the above contention raised by the respondents/defendants, the revision petitioner/plaintiff filed an Interlocutory Application in I.A.No.111 of 2016 in O.S.No.92 of 2007 under Order VI Rule 17 and Section 151 of Civil Procedure Code, seeking to amend the plaint that she is entitled to use the suit lane as an easement of necessity and she has no other access to her property. The particulars of amendment is as follows:

“The defendants 3 and 5 to 10 inter-alia contend in their written statement that the plaintiff has no right in the suit lane. The plaintiff state that she is entitled to use the suit lane as an easement of necessity also as the plaintiff has no other access to here property”

7. The learned counsel for the respondents/defendants contended that if



the amendment petition is allowed, then, it will change the nature of the suit and leads to the commencement of fresh trial. He further submitted that the written statement was filed as early as in the year 2007 and the amendment petition seeking easementary rights in the suit was filed only on 16.02.2016, which is after a delay of nine years and now, the entire trial is over and the suit is in argument stage.

8. The learned counsel for the respondents/defendants further contended that the revision petitioner/plaintiff earlier filed an Interlocutory Application in I.A.No.99 of 2016, seeking to amend the plaint and the same was withdrawn by the revision petitioner/plaintiff and I.A.No.111 of 2016 is the second amendment petition filed by the revision petitioner/plaintiff in O.S.No.92 of 2007 for amending the plaint and the Trial Court has rightly dismissed the amendment application on 15.03.2016.

9. Heard Mr.A.Sundaravadhanam, learned counsel appearing for the petitioner and Mr.I.C.Vasudevan, learned counsel appearing for the respondents 3 to 6, 8 & 9. None appeared on behalf of the respondents 1,2 & 7 and perused the material documents available on record.



WEB COPY

10. It is seen from the records that the written statement was filed in the year 2007 and the revision petitioner/plaintiff did not choose to file the amendment petition immediately. The reason given by the revision petitioner/plaintiff for amending the plaint is that the defendants 3 & 5 to 10 have contended in the written statement that the revision petitioner/plaintiff has no right in the suit lane and she is entitled to use the suit lane as an easement of necessity and has no other access to the property existed in the suit schedule property lane.

11. The revision petitioner/plaintiff is well acquainted with the above facts as early as in the year 2007 but did not choose to file the amendment application and no valid/genuine/sufficient reasons has been adduced to explain the inordinate delay of nine years in filing the application for amendment. It is pertinent to note that if the amendment application is allowed, no doubt, it will change the nature of the suit and moreover, in this case, the trial has over and the suit is in the argument stage before the trial Court.



12. It is a well settled law that the pleadings cannot be amended after the commencement of the trial. It is pertinent to extract Order VI Rule 17 of C.P.C. hereinbelow:

“17. 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.”

From a careful reading of the above provision, it is seen that no application for amendment shall be allowed after the trial has commenced. In the present case, the trial Court could not come to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

13. The revision petitioner/plaintiff failed to satisfy the condition stipulated in the proviso to order VI Rule 17 of Civil Procedure Code that 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.

But, in this case, no reason has been adduced by the revision petitioner/plaintiff to satisfy the Court to come to such a conclusion.

14. The trial Court after taken into consideration of the above facts and circumstances of the case, has rightly dismissed the application filed by the revision petitioner/plaintiff for amending the prayer in the suit.

Hence, for the foregoing reasons, I do not find any ground to interfere with the order passed by the trial Court.

15. In the result, this Civil Revision Petition is dismissed and the fair and final order passed by the II Additional District Munsif, Erode in I.A.No.111 of 2016 in O.S.No.92 of 2007 dated 15.03.2016 is hereby confirmed. No costs. Consequently, connected C.M.P.No.10107 is closed.

22.03.2022

vm

Index : Yes/No

Speaking Order/Non-Speaking Order



WEB COPY

C.R.P(PD)No.1940 of 2017



To:

The II Additional District Munsif,
Erode.



WEB COPY

C.R.P(PD)No.1940 of 2017



J.SATHYA NARAYANA PRASAD,J.

vm



WEB COPY

C.R.P(PD)No.1940 of 2016



Pre Delivery Order in
C.R.P(PD)No.1940 of 2016

22.03.2022