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CRP.(NPD).No. 2006 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(NPD).No. 2006 of 2019

and

CMP.No. 13015 of 2019

G. Amanullah

.. Petitioner

Versus

S. A. Rameza Beebi (Died)

1. Dhanesh
2. S. B. Aslam
3. S.A. Sajitha Banu
4. S.K. Kowsar Banu
5. S.A. Asraf
6. Thirugnanam

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 06.02.2019 in I.A.No. 407 of 2018 in O.S.No.173 of 2005 on the file of District Munsif Court, Gudiyattam.



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For Petitioner : Mr.T.Karunakaran

For Respondent-1 : Mr.K.A. Ravindran

For RR 3 to 6 : No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 06.02.2019 passed in I.A.No. 407 of 2018 in O.S.No.173 of 2005 by the District Munsif Court, Gudiyattam.

2. The revision petitioner herein is the 1st defendant and the respondents 1 to 5 herein are the plaintiffs and the 6th respondent herein is the 2nd defendant in the original suit proceedings.

3. Heard the learned counsel for the petitioner and learned counsel for the 1st respondent and perused the materials available on record.

4. The learned counsel for the petitioner/1st defendant contended that "B" schedule property has not been in possession of the plaintiffs.



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I.A.No.407 of 2018 was filed before the trial Court after filing of the Commissioner's Report. The plaintiffs have no objection, while the first defendant was putting up construction in the "B" schedule property. The said application was filed in the year 2018, after filing reply statement in the year 2005. He has purchased some Plots viz., 60, 61 and 62, wherein, the first defendant had put up construction in the "B" schedule property, but the plaintiffs have filed the said I.A.No.407 of 2018 seeking permission to amend the prayer for declaration of title in respect of the "B" schedule property, in favour of the 1st plaintiff (since deceased). But there is no cause of action to amend the prayer for inclusion of declaration of prayer in the suit. However, the learned trial Court Judge, without considering the period of limitation in filing the said IA, had erroneously allowed the said application, as the learned counsel for the 1st defendant contended that the IA was filed after enormous delay. Hence, he prays to set aside the findings of the trial Court.

5. The learned counsel for the respondents 1 to 5/plaintiffs submitted that, after filing of the Commissioner's Report, in the year 2018, the plaintiffs came to know that the alleged encroachment was made by the



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first defendant in the "B" schedule property and therefore, the respondents 1 to 5/plaintiffs have filed an application to amend the prayer by including the declaration and the same was appreciated by the trial Court which may not be interfered with by this Court. Therefore, the above revision may be dismissed.

6. On a perusal of the records, it is seen that the respondents 1 to 5/plaintiffs have earlier filed the suit in O.S.No.173 of 2005 before the District Munsif Court, Gudiyattam, for permanent injunction restraining the defendants from making construction in the suit "B" schedule property. The revision petitioner/1st defendant contested the suit by way of filing written statement. During the pendency of the suit proceedings, the 1st plaintiff died and thereafter, the legal heirs of the deceased first plaintiff were impleaded in the suit proceedings. Pending suit, an Advocate Commissioner was appointed and he has filed a report before the trial Court. At this juncture, on 01.10.2017, the 1st defendant has encroached some portion of "B" schedule property and constructed a house without due process of law. At that time, the respondents 1 to 5 /plaintiffs filed I.A.No.407 of 2018 under Order VI Rule 17 read with Section 151 of



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CPC, seeking permission to amend the plaint in respect of "B" schedule property. After perusing the records, the trial Court allowed I.A.No.407 of 2018 by the impugned order dated 06.02.2019, by directing the respondents 1 to 5/plaintiffs to pay costs of Rs.2,000/- to the revision petitioner/1st defendant. Challenging the same, the revision petitioner/1st defendant has filed the present revision.

7. On a further perusal of the records, it is seen that "B" schedule property originally belonged to the deceased 1st plaintiff, in which, the 1st defendant has encroached Plot No.63 and had put up construction. Therefore, the plaintiffs have approached the Court below for permanent injunction restraining the defendants from making any construction in "B" schedule property. The 1st defendant has filed a detailed written statement, denying all the averments made in the plaint and the first defendant has purchased some Plot Nos. 60, 61 and 62 and he has constructed a house in "B" schedule property which is Plot No.63.

8. During the pendency of the suit proceedings, the learned Advocate Commissioner has filed his report dated 28.04.2018 before the



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trial Court after inspecting "B" schedule property. Thereafter, the plaintiffs have filed the said application in I.A.No.407 of 2018 seeking to amend the prayer by including the relief of declaration in respect of title of "B" schedule property. The same was strongly objected to by the revision petitioner/1st defendant even in the year 2005, while he filed written statement. The contention of the 1st defendant is that he has already constructed a house in "B" schedule property, which has been purchased by the 1st defendant. He has not made any encroachment, as claimed in the plaint, and in spite of taking steps to amend the pleadings in the year 2005 after filing written statement, only after 12 years, the 1st plaintiff has filed the said IA, which is barred by limitation and therefore, the plaintiffs are not entitled to amend the prayer by including the relief of declaration. After hearing both sides, the trial Court allowed the said application on the ground that, after filing of the Commissioner's Report, the 1st plaintiff came to know that the 1st defendant has encroached and put up construction in "B" schedule property. Therefore, the said application as such is maintainable.



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9. While that being the case, the trial has already commenced and PW1 was also examined. Therefore, the 1st plaintiff has filed an amendment application by including the prayer of declaration because, the contention of the defendants is that Plot No.63 belongs to him. Even though reply statement was filed in the year 2005, the learned Advocate Commissioner's Report states that the plaintiff (since deceased) has approached the Court for amendment, which is well in time.

10. The learned counsel for the revision petitioner/first defendant has relied upon the decision of the Apex Court in the case of **Pandit Malhari Mahale Vs. Monika Pandit Mahale and Ors.**, reported in **(2020) 11 SCC 549**, and submitted that the plaintiffs ought to have shown due diligence while filing the suit itself. The said IA is maintainable even though trial has begun. The said decision of the Supreme Court is not applicable to the facts of the present case. The plaintiff has filed an application to amend the pleadings by including the relief of declaration.

11. On a perusal of the learned Advocate Commissioner's Report, it reveals that "B" schedule property has been encroached by the



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first defendant and other third parties and subject to proof and relevancy only at the time of trial. As there is cause of action, the plaintiff is entitled to incorporate the prayer of declaration, which would not lead to multiplicity of proceedings. Hence, this revision petition filed by the first defendant is not maintainable. Therefore, this Court is not inclined to allow this revision and the same is liable to be dismissed.

12. Accordingly, this Civil Revision Petition is dismissed. It is open to the revision petitioner/1st defendant to file additional written statement in respect of the newly amended pleadings made by the plaintiff. Further, the trial Court is directed to dispose of the suit itself in O.S.No.173 of 2005 on the file of District Munsiff Court, Gudiyattam, within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

14.11.2022

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Speaking Order: Yes/No

Neutral citation : Yes/No

Index : Yes/No



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To

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1. The District Munsif, Gudiyattam.
2. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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