



C.R.P. (PD) .No.2404 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2404 of 2021

and

C.M.P.No.18278 of 2021

C.Kuppana Gounder (Died)

Ayyammal

[Cause title accepted vide court order dated 21.10.2021 made in
CMP.No.16808 of 2021 in CRP.Sr.No.89678 of 2021]

.. Petitioner

Vs.

C.Nanjappa Gounder (Died)

1.Palaniammal

2.Raja

3.Mohan Kumar

4.Ammasai

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 26.04.2021 passed by the learned Principal District Munsif, Bhavani in I.A.No.3 of 2021 in O.S.No.13 of 2020.

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For Petitioner : Mr.L.Mouli
For Respondents : Mr.Arunprasad
for Mr.M.Guruprasad

ORDER

Challenge in this Revision is to the order of the trial Court dismissing the application filed by the plaintiff seeking amendment of the plaint.

2. The suit in O.S.No.13 of 2020 was filed by the petitioner herein seeking permanent injunction restraining the defendants from interfering with the possession of the plaintiff, trespassing over the suit first item and altering the existing physical features. The plaintiff would claim that the suit 1st item exclusively belongs to the plaintiff and the defendants have no right over the same. It is also claimed that the defendants had colluded together and obtained a decree before the lok adalat in O.S.No.197 of 2019, with the aid of which the defendants are attempting to trespass over the properties of the plaintiff. The suit is resisted by the defendants raising various contentions.

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3. Pending suit, claiming that the defendants have trespassed and put up construction over the suit property, the plaintiff filed the instant application in I.A.No.3 of 2021 seeking to amend the plaint to incorporate a prayer for mandatory injunction directing the defendants to remove the illegal construction put up by them. Paragraph 12(a) and 12(b) were sought to be added in the plaint apart from adding a prayer for mandatory injunction. This was resisted by the defendants contending that the nature of the suit will be altered.

4. The learned trial Judge concurred with the defence and further held that the plaintiff has not furnished the details of encroachment and therefore the amendment cannot be allowed.

5. Mr.L.Mouli, learned counsel appearing for the petitioner would vehemently contend that he has sought for including certain averments stating that the defendants have encroached upon the property and for inclusion of the prayer for mandatory injunction to remove the



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superstructure. The nature of encroachment has to be gone into only at the time of trial and the same cannot be subject matter of pleadings. He would also submit that the trial Judge was not right in concluding that the very nature of the suit would be altered. He would further point out that the dismissal of application would result multiplicity of proceedings and the plaintiff would be forced to file a fresh suit for the very same relief.

6. Contending contra Mr.Arun Prasad, learned counsel appearing for the respondents would submit that the very nature of the suit will be altered if the prayer for mandatory injunction is included and it is open to the plaintiff to file a fresh suit.

7. I am unable to agree with the counsel for the respondents. The power to amend, that too, prior to commencement of trial, is very wide and it is intended to avoid multiplicity of proceedings. If this application for amendment is dismissed, it will be open to the plaintiff to file a fresh suit for the relief which is sought to include by way of amendment. The finding of the trial Court that the nature of the suit will be altered is wholly



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unacceptable. Pending suit for permanent injunction, if the defendants trespass and puts up construction, it is open to the plaintiff to incorporate a prayer for recovery of possession or mandatory injunction in the suit for permanent injunction. It cannot be said that the nature of the suit is altered.

8. Hence, I am unable to sustain the order of the trial Court. Therefore, the Revision is **allowed**. The order of the trial Court is set aside and the petition in I.A.No.3 of 2021 will stand allowed. The plaintiff to take steps to amend the plaint. It is made clear that a separate petition for carrying out the amendment is unnecessary and the plaintiff is permitted to carry out the amendment by filing a memo along with a copy of this order. The defendants would be entitled to file additional written statement, upon filing of the amended plaint by the plaintiff. No costs. Consequently, the connected miscellaneous petition is closed.

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R.SUBRAMANIAN, J.

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To

The Principal District Munsif, Bhavani.

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