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C.R.P.No.67 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.67 of 2022
and
C.M.P.No.397 of 2022

1. Marusilin
2. Philomina
3. Marry Stella
4. Minor Arul Raj
5. Minor Claris
6. Minor Sam Xavier

... Petitioners

Versus

1. Marie Rosalin
2. The Tahsildar
Gingee Taluk,
Villupuram District.
3. The District Collector,
Villupuram District,
Villupuram

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 29.10.2021 passed in I.A.No.1356 of 2021 in O.S.No.126 of 2013 on the file of the District Minsif, Gingee and allow the revision.



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For Petitioner : M/s.R.Sunil Kumar

For Respondents

For R1 : M/s. G.Palani

For R2 & R3 : Dr. S.Suriya

Additional Government Pleader

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below allowing the amendment application filed by the first respondent/Plaintiff, when the Suit was reserved for pronouncement of Judgment.

2. The first respondent herein filed a suit for declaration of title, injunction and other reliefs in O.S.No.126 of 2013. The first respondent claims that the suit property is a vacant site. The revision petitioner filed written statement on 22.08.2013 and averred that the suit property is not a vacant site and there are constructions available there. Subsequently, the revision petitioner filed an application for appointment of Advocate Commissioner to note down the availability of the constructions in the suit property. In the affidavit filed in support of the appointment of Advocate Commissioner, he specifically averred that the suit property is not a vacant



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site and the revision petitioner put up residential building and enjoying the same with water and electricity connection.

3. The learned counsel for the first respondent herein filed a detailed counter denying the existence of residential house and constructions in the suit property. It was further averred that the revision petitioners were attempting to put up new constructions in the suit property and physical features of the suit property were also altered.

4. Though, the said counter was filed by the respondent on 22.04.2014, no attempt was made by the first respondent seeking amendment of the plaint. The trial in the Suit was already over and the matter was reserved for Judgement on 20.10.2021. Thereafter, wisdom suddenly dawned upon the first respondent and he filed a petition for amendment of the plaint in I.A.No.1356 of 2021. By virtue of the amendment, the first respondent wanted to include the prayer for recovery of possession after removal of construction found in the suit property. In the affidavit filed in support of the petition filed for amendment, the respondent had not stated any reason for his failure to seek amendment of the plaint immediately after acquiring the knowledge about the



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construction in the said property. It is pertinent to note that, in the written statement which was filed on 22.08.2013, it was stated that there were constructions in the suit property. The constructions in the suit property was admitted by the 1st respondent in his counter filed in I.A.No.63 of 2014 which was filed on 22.04.2014.

5. The proviso to order 6 rule 17 of CPC put restrictions on the power of the trial Court in entertaining amendment petition subsequent to commencement of trial. As per the proviso unless the party applying for amendment satisfy the Court that notwithstanding exercise of due diligence by him, he was not able to seek amendment prior to commencement of trial, the amendment cannot be ordered. In the case on hand, the 1st respondent in his counter to I.A.63 of 2014 admitted that constructions were put up in the suit property. The said counter was filed on 22.04.2014, well before commencement of trial. In the affidavit filed in support of the petition for amendment, the 1st respondent has not given any convincing reason for his failure to seek amendment prior to commencement of trial. Hence, condition precedent for entertaining the post trial amendment namely satisfaction of Court that party applying for amendment was prevented by reasonable cause



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from seeking amendment prior to commencement of trial is missing in this case.

6. In view of the above, this Court finds no reason for the failure of the respondent in seeking amendment even though, the first respondent acquired knowledge about the presence of constructions in the suit site prior to commencement of trial. Further, Hon'ble Apex Court in case law reported in **Vidyabai and others Vs. Padmalatha and others** in **MANU/SC/8401/2008**, held as follows

"14. It is the primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the Court, It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint"



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7. In view of the above discussion, this Court is not inclined to accept the reason given by the Court below for allowing the amendment petition and hence the order dated 29.10.2021 passed in I.A.No.1356 of 2021 in O.S.No.126 of 2013 on the file of the learned District Munsif, Gingee is set aside.

8. Accordingly, this Civil Revision Petition is allowed. Consequently, Connected Miscellaneous Petition is closed.

20.09.2022

Index : Yes/No

Speaking Order : Yes /No

Sma

To:

learned District Munsif, Gingee



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S.SOUNTHAR,J.

Sma

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