



CRP.(PD).No. 4799 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

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

C.R.P.(PD).No. 4799 of 2017

and

CMP.No.22598 of 2017

V. Kaliyamoorthy

.. Petitioner

Versus

1. P. Mahalingam (Died)

2. Marimuthu

3.Muthulakshmi

4.Indira Devi

[respondents 2 to 4 brought on record as LR's
of the deceased Sole Respondent viz., Mahalingam
vide Court order dated 28.06.2022
made in CMP.No.4019 of 2022]

...Respondents

Civil Revision Petition is filed under Article 227 of the
Constitution of India, to set aside the order dated 20.07.2017 made in
I.A.No.341 of 2017 in O.S.No.286 of 2015 on the file of Additional
District Munsif, Mayiladuthurai.



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For Petitioner : Mr.A.Ganapatheeswaran

For R1 : Died

For RR 2 to 4 : Mr.N. Anissar Ahmed

ORDER

This Civil Revision Petition has been filed to set aside the order dated 20.07.2017 made in I.A.No.341 of 2017 in O.S.No.286 of 2015 on the file of Additional District Munsif, Mayiladuthurai.

2. The revision petitioner is the plaintiff and the 1st respondent herein is the defendant in the original suit.

3. The revision petitioner is the plaintiff in the suit in O.S.No.286 of 2015 filed by him for the relief of permanent injunction against the 1st defendant in respect of the suit property comprised in R.S.No.80/17 measuring to an extent of 5 cents by way of registered sale deed in Doc.No.684 of 1957, dated 01.05.1957 on the file of Sub Registrar Office, Kuttalam. The revision petitioner denied the defendants right over the property by filing a written statement. Subsequently, the



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Advocate Commissioner was appointed to measure the suit property and report was filed. Trial had begun. PW1 was examined. At that time, the petitioner/plaintiff filed application in I.A.No.341 of 2017 under Order VI Rule 17 of CPC., praying for amendment of the plaint including the prayer. The said application was strongly objected by the defendant stating that without claiming the relief of declaration, the prayer is not maintainable and after examination of the witnesses, to fill up the lacuna, the petitioner/plaintiff has filed the said application based on the Advocate Commissioner's report which cannot be permitted. Furthermore, nearly for about four years, the petitioner/plaintiff has not taken any steps to amend the pleadings. Though the 1st defendant has raised some objection by filing a written statement, there is no reason assigned by the petitioner/plaintiff as to why he has not taken any steps to amend the prayer at the earliest point of time and the conduct of the plaintiff shows that he has not taken due diligence to proceed with the case.



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4. On considering both submissions, the trial Court dismissed the application stating that after commencement of the trial, the petitioner/plaintiff filed an application and as such, the same is not permissible and the conduct of the plaintiff shows that to fill up lacuna, he has filed an application to amend the pleadings of the plaint and as such, the same is not maintainable. Accordingly, the application was dismissed.

5. Challenging the same, the petitioner/plaintiff has approached this Court, stating that the 1st defendant constructed a tiled house and after demolishing the tiled house, he has also slowly started to encroach the petitioner/plaintiff's land by way of construction and in respect of the notice issued by him after Advocate Commissioner's report, the property was measured and thereafter, he came to know that while the same was demolished by the 1st defendant, which belongs to him, instructed him to file an application for recovery of possession.



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6. The learned counsel for the revision petitioner/plaintiff submitted that the amendment should be taken from the date of filing of the application and not from the date of institution of the suit, subject to objection noted by this Court.

7. By way of reply, learned counsel appearing for the 1st defendant submitted that the petitioner/plaintiff has not assigned any reason as to when it was encroached by the 1st defendant, nor in spite of his due diligence, he was not able to file an application in time. The suit is of the year 2015. Subsequently, he has filed recovery of possession after the Advocate Commissioner's report is filed and that the trial has begun. On seeing the fact that they are claiming right over the property, the petitioner/plaintiff ought to have taken steps to amend the pleadings as well as for recovery of possession. Even in that amendment application, he sought for only recovery of possession.



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8. On seeing the issue between the parties to be adjudicated, namely, the reason assigned by the plaintiff and on considering the relief, and in order to give an opportunity to the petitioner/plaintiff, this Court allows this Civil Revision Petition by setting aside the findings of the trial Court. Accordingly, the I.A.No.341 of 2017 is allowed. The petitioner/plaintiff is directed to incorporate the reliefs of declaration in the proper manner in order to avoid multiplicity of proceedings. It is open to the defendants to file additional written statement to conduct the case. Further, the trial Court is directed to dispose of the suit in O.S.No.286 of 2015 on the file of Additional District Munsif, Mayiladuthurai, within a period of six months from the date of receipt of a copy of this order.

9. With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.10.2022

msm



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Index : Yes/No
Speaking Order : Yes/No

To

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



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T.V.THAMILSELVI, J.

msm

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