



C.R.P.No.1185 of 2020
and C.M.P.No.6385 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

CORAM:

THE HONOURABLE **MRS.JUSTICE R. HEMALATHA**

C.R.P.No.1185 of 2020
and
C.M.P.No.6385 of 2020

Jeganathan

... Petitioner

..Vs..

Vembanna

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 04.02.2019 in I.A.No.750 of 2016 in O.S.No.107 of 2011 on the file of the II Additional District Munsif, Kallakurichi.

For Petitioner : Mr.A.K.Rajaraman

For Respondent : Mr.S.Mukunth for

M/s.Sarvabhauman Associates

ORDER

The present petition has been filed challenging the orders passed in I.A.No.750 of 2016 in O.S.No.107 of 2011 on the file of the II Additional District Munsif, Kallakurichi.



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2.For the sake of convenience, the parties are referred to as per their ranking in the trial Court and in appropriate places, their rank in the present petition would also be indicated.

3.The revision petitioner is the defendant in O.S.No.107 of 2011 on the file of the II Additional District Munsif, Kallakurichi. The respondent/plaintiff filed an application under Order VI Rule 17 CPC in I.A.No.750 of 2016 in O.S.No.107 of 2011 seeking to amend the plaint to include the prayer for declaration of his title to the suit property and also for recovery of possession of the same

4.The learned II Additional District Munsif, Kallakurichi, allowed the said application vide her orders dated 24.01.2019. Originally the suit was filed by the plaintiff for a bare injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property. In the affidavit filed in support of the petition in I.A.No.750 of 2016 the plaintiff had contended that during the pendency



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of the suit the defendant encroached upon his suit property in suit items 12 & 14 and that this was also confirmed by the Advocate Commissioner's report and plan. He therefore, filed the petition under Order VI Rule 17 CPC to amend the prayer of the plaint and pleadings for including a decree for declaration of his title to items 12 & 14 and also for recovery of possession of the encroached portion.

5.The learned II Additional District Munsif, Kallakurichi, allowed the said application by observing thus :

"Admittedly the suit is filed only for bare injunction. According to the petitioner during the pendency of the suit the respondent has encroached upon the suit property through the report of the Advocate Commissioner the same is confirmed. So amendment is sought to included the prayer for recovery of possession. It is seen that only during the pendency of the suit the encroachment came to knowledge of the petitioner and to that effect Advocate Commissioner filed his report and plan. So at the said circumstances the court think it is just and necessary to amend the plaint and seek the relief of recovery. Where as the main contention of the Respondents is that the amendment sought only on the basis of Advocate



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Commissioner report and plan and that too after lapse of 3 years after filling the report which is barred by limitation.

At this juncture the court inclined to note that the respondents can arise the defense in his additional written statement and issues shall be framed and decided in the suit further it is for the petition/plaintiff to establish his case through his independent witness. Further more this suit is of the year 2011 already 7 years lapsed and trial not commenced, so for the above fore going reason and in order to avoid multiplicity of proceedings and in the interest of justice the court inclined to allow the petition on condition that"

6.Heard Mr.A.K.Rajaraman, learned counsel for the revision petitioner and Mr.S.Mukunth, learned counsel for the respondent.

7.Mr.A.K.Rajaraman, learned counsel appearing for the revision petitioner would contend that the amendment petition was filed by the plaintiff based on the report of the Advocate Commissioner and therefore the amendment petition ought not to have been allowed by the trial Court. He would also contend that the amendment itself is barred by limitation and it also creates a new cause of action.



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8.Per contra Mr.S.Mukunth, learned counsel appearing for the respondent would contend that the trial Court had rightly observed that when the plaintiff contends that during the pendency of the suit the defendant encroached upon the suit property and it is also affirmed by the Advocate Commissioner's report, the amendment sought for by the plaintiff should be allowed. He also drew the attention of this Court to the order of the trial Court wherein the Court had observed that the defendant can file additional written statement based on which additional issues would be framed and that it is for the plaintiff to establish his case by adducing acceptable evidence. In such circumstances, it was contended that this Court need not interfere with the orders passed by the trial Court.

9.It is true that originally the suit was filed by the plaintiff for a permanent injunction. An Advocate Commissioner was appointed by the trial Court to inspect the suit property and he also filed his report and plan. In the Advocate Commissioner's report it was stated that the



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defendant had encroached upon the suit property. The plaintiff had therefore filed a petition to amend the plaint for inclusion of the prayer for declaration of his title to the suit property and also for recovery of encroached portion. The trial Court had gone into the implications of such encroachments made by the defendants during the pendency of suit and had also rightly held that the plaintiff had to establish his case by adducing acceptable oral and documentary evidence in this regard and no prejudice is going to be caused to the defendant by amending the plaint. In the circumstances, I do not find any infirmity in the orders passed by the trial Court. Since the suit is of the year 2011, the trial Court is directed to dispose of the same as expeditiously as possible.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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mtl

Index : Yes/No

Speaking / Non-speaking order



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R. HEMALATHA, J.

mtl

To

- 1.The II Additional District Munsif, Kallakurichi.
- 2.The Section Officer, VR Section, High Court, Madras.

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