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C.R.P.(PD)No.3758 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2021

Pronounced on : 17.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD)No.3758 of 2018
and C.M.P.No.20954 of 2018

S.Arul Prakash

.. Petitioner

Vs.

1. R.Kamalam

2. T.M.Durairaj
Respondents

..

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order, dated 31.08.2018, passed in I.A.No.204 of 2018 in O.S.No. 55 of 2015 on the file of II Additional District Munsif, Coimbatore.

For Petitioner : Mr.K.Gangadaran

For Respondent 1 : Mr.N.Manokaran



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For Respondent 2 : Mrs.M.Indira Priyadarshini

ORDER

This Civil Revision Petition has been filed against the fair and decretal order, dated 31.08.2018, passed in I.A.No.204 of 2018 in O.S.No. 55 of 2015 on the file of II Additional District Munsif, Coimbatore.

2. The petitioner herein is the defendant in O.S.No.55 of 2015 filed by the respondents/plaintiffs for mandatory and permanent injunction and for damages. While so, the petitioner also filed a suit in O.S.No. 717 of 2003 for permanent injunction against the respondents/plaintiffs herein and also another suit in O.S.No.283 of 2005 against them for recovery of advance amount of Rs.30,000/- (Rupees Thirty Thousand Only). Later, three suits were clubbed together and a joint trial also started, wherein, the respondents/plaintiffs have also filed proof affidavit. During the pendency of the suits, the respondents/plaintiffs have moved an



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application in I.A.No.204 of 2018 under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment of the plaint filed in O.S.No.55 of 2015. By an order, dated 31.08.2018, the trial Court allowed the said application. Aggrieved over the said order, the petitioner / respondent therein has come forward with the present revision petition.

3. Learned counsel for the petitioner would contend that the respondents/plaintiffs already filed additional written statement along with a petition under Order 8 Rule 9 and under 151 CPC in I.A.No.351 of 2010 in O.S.No.283 of 2005 with a prayer to deliver the possession of the suit property. While so, with the same prayer, respondents/plaintiffs moved I.A.No.204 of 2018 by way of an amendment. I.A.No.351 of 2010 came to be dismissed, against which, a revision petition has also been filed by the respondents/plaintiffs against the petitioner herein, which also came to be disposed of by this Court. Therefore, learned counsel for the petitioner would submit that without noticing the same, the trial Court has allowed the present I.A., which cannot be sustained, as the same is



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hit by *res-judicata*.

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4. Learned counsel for the petitioner pointed out that it is a well settled principle of law that a matter cannot be re-agitated, which was already decided between the parties. He also submitted that only in order to drag on the proceedings, the respondents/plaintiffs have filed the application in question and successfully dragged on the matter for the past fifteen years. Accordingly, he sought for setting aside the order, passed by the Court below.

5. On the other hand, learned counsel for the respondents/plaintiffs would contend that the trial Court has rightly considered the matter and allowed the application, which needs no interference by this Court. He pointed out that only in order to avoid multiplicity of proceedings, the trial Court entertained the application, since the relief sought by the respondents/plaintiffs was to amend the relief of mandatory injunction to delivery of possession and, if it was not entertained, the



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respondents/plaintiffs would certainly file another suit. Therefore, the learned counsel would submit that there is absolutely no infirmity in allowing the I.A., filed by the respondents/plaintiffs, claiming delivery of possession of the suit property.

6. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the material available on record.

7. This Civil Revision Petition falls in a narrow compass. In other words, it has to be decided under the only scope of the provision contained in Order VI Rule 17 of the Code of Civil Procedure Code. Order VI Rule 17 of CPC speaks to the effect that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made, as may be necessary for the purpose of determining the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the



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trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8. Provision relating to amendment of pleadings gives power to the Civil Court to allow parties to alter, amend or modify the pleadings at any stage of proceedings. Provision for amendment of pleadings has been stated in Order VI Rule 17 of the Code of Civil Procedure. But, the Court will allow amendment only if the amendment is necessary to determine the controversy between the parties. The purpose of this provision is to promote ends of justice and not to defeat the law. Also, the Proviso of Order VI Rule 17 states that the Court will not allow application for amendment after the trial has been commenced, unless the Court comes to the conclusion that party did not raise the relevant facts before the commencement of the trial. This proviso gives discretionary power to the Court to decide on the application of pleadings, after the commencement of trial.

9. The primary objective for the Court to allow the application for



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Amendment of Pleadings is to secure the ends of justice and prevent injustice to other parties. Further, amendment is necessary for the purpose of determining the real questions in controversy between the parties. Amendment of pleadings helps the party to correct its mistakes in the pleadings. Besides, the object behind amendment of pleadings is to protect the rights of the parties and not to punish them for the mistake made by them in the pleadings. It is also important for the Court to allow the application for amendment, when it is filed to avoid multiplicity of suits.

10. In *Baldev Singh v. Manohar Singh*, 2006 (6) SCC 498, the Hon'ble Supreme Court clarified as what exactly is commencement of trial, that Commencement of trial, as used in proviso to Order VI Rule 17 in the Code of Civil Procedure, must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments.

11. An application to amend pleadings is allowable, when the Court finds it necessary to determine the real questions in controversy and when



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it does no injustice to the opposite party. Both these conditions have to be fulfilled. In general, in a pre-trial situation, an amendment to a pleading may be allowed, when such an amendment is for granting a consequential relief; for preventing more proceedings on the same case; when certain events take place after filing the pleadings; when such an amendment clarifies the previously filed pleadings; when parties are incorrectly described, and where there is a misstatement of cause of action or any other bonafide omissions, that are necessary to determine the rights of the parties involved.

12. Keeping the above objectives in mind, if we see the present case, already three suits viz., O.S.No.717 of 2003, O.S.No.283 of 2005 and O.S.No.55 of 2015 are pending relating to the very same property over different causes of action on the file of the same Court and between the same parties and that the same are clubbed together for trial. In addition, the amendment sought was because of a bonafide omission, that was necessary to determine the rights of the parties. In the



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given situation, if the amendment is not allowed, it will lead to filing of another suit by the plaintiff, thereby resulting in multiplicity of suits and proceedings, whereas, on permitting the said amendment, no prejudice would be caused to the revision petitioner. It would only facilitate the Court to determine the real questions in controversy and it does no injustice to the opposite party. The amendment was also imperative to protect the right of the party and not to punish it for the mistake committed by it in the pleadings.

13. With regard to the contention of the learned counsel for the petitioner that in I.A.No.351 of 2010 in O.S.No.283 of 2005, the prayer of the respondents herein to file additional written statement regarding delivery of possession was rejected and, therefore, the present application in I.A.No.204 of 2018 in O.S.No.55 of 2015 for amendment of plaint for the very same prayer is hit by *res judicata*, it is to be stated that O.S.No.283 of 2005 was a different suit filed by the petitioner herein against the respondents for a different cause of action, namely, return of



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money, spent by him to put up the house in the suit property, wherein, the respondents herein filed I.A.No.351 of 2010, to receive additional written statement, making a counter claim for delivery of possession of the suit property and for damages, which, according to the petitioner, was rejected. However, no order to that effect has been produced before this Court. Even assuming that the said application was rejected, it was only for filing additional written statement and it was the discretion of the Court either to permit it or not. Just because the said application for receiving additional written statement was rejected, it cannot be said that the main relief in the present suit shall stand negated. What may, that suit O.S.No.283 of 2005 was instituted by the petitioner herein, whereas the present suit O.S.No.55 of 2015 has been instituted by the respondents. It is only in the present suit filed by the respondents, they sought for amendment of pleadings, and the matter shall be decided in finality, only after full-fledged trial. Therefore, the contention in this regard is brushed aside.



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14. Under the circumstances, the Court below is perfectly justified in allowing the application for amendment, which, in the considered opinion of this Court, does not call for any interference.

15. Civil Revision Petition is, accordingly, dismissed. No costs. Consequently, the connected C.M.P. is also dismissed.

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Index : Yes / No

Internet : Yes/No

Speaking /Non-speaking Order

gbi/dixit

To

II Additional District Munsif,
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S.KANNAMMAL,J.

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