



C.R.P.(PD) No.86 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD) No.86 of 2023

and

C.M.P.No.646 of 2023

1.Mohan

2.Santhosh

3.Ezhilaralsi

... Petitioners

Vs.

Bhavani

... Respondent

Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decretal order dated 29.11.2022 made in I.A.No.1 of 2022 in I.A.No.521 of 2018 in O.S.No.82 of 2012 on the file of the District Munsif Court, Gudiyattam.

For Petitioners : Mr.N.Manoharan

For Respondent : No appearance



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ORDER

WEB COPY This Civil Revision Petition has been filed against the impugned order dated 29.11.2022 passed by the District Munsif Court, Gudiyattam in I.A.No.1 of 2022 in I.A.No.521 of 2018 in O.S.No.82 of 2012.

2. The petitioners are the defendants in O.S.No.82 of 2012. Originally, the suit in O.S.No.82 of 2012 was filed by the respondent for permanent injunction in the year 2012. On 15.06.2012, Written Statement was filed by the petitioners/defendants. An Advocate Commissioner was appointed and a Report was filed.

3. After 6 years, the respondent/plaintiff has filed I.A.No.521 of 2018 to amend the prayer by including the relief for declaration and for recovery of possession based on the Advocate Commissioner's Report. The said I.A was strongly opposed by the petitioners/defendants stating that the proposed amendment ought to have been taken on record much earlier and therefore, the proposed amendment cannot be permitted. The said I.A.No.821 of 2018 was pending.



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4. During the pendency of I.A.No.521 of 2018, the respondent/plaintiff filed another I.A.No.1 of 2022 to amend I.A.No.521 of 2018. In that application, the proposed amendment includes the amendment of the prayer column, valuation in the plaint and the particulars of the plaint by adding paragraph No.2(b). Particularly, they want to amend the prayer in I.A.No.521 of 2018 by including all proposed amendments. The said I.A. was strongly opposed by the petitioners/defendants stating that the pleadings of the earlier I.A. cannot be amended by filing another I.A. and that the respondent/plaintiff ought to have worked out his remedy in the earlier I.A.No.521 of 2018. Besides, the said application is highly belated one.

5. After hearing the parties, the said I.A.No.1 of 2022 was allowed *vide* impugned order dated 23.11.2022 on the ground that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and inadvertently the respondent/plaintiff has failed to mention about the proper particulars. Challenging the same, the present Civil Revision Petition has been filed.



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6. Notice was served. However, there is no representation on behalf of the respondent/plaintiff. The learned counsel for the petitioners/defendants submits that the respondent/plaintiff has no right to file I.A.No.1 of 2022 to amend I.A.No.521 of 2018 which was earlier filed to amend the prayer and the pleading of the suit.

7. Strangely, the Trial Court has failed to note that the earlier application in I.A.No.521 of 2018 filed by the respondent/plaintiff to amend the prayer column of the suit is still pending. Without deciding the earlier I.A.No.521 of 2018, the Trial Court took up the second application in I.A.No.1 of 2022 which was filed for the amendment to I.A.No.521 of 2018 but not for the amendment to plaint pleadings in the suit. The amendment application cannot be amended by another amendment application. If the respondent/plaintiff wants to amend the application, he has to file only one application. But, strangely, the respondent/plaintiff has filed two application to amend the pleadings, out of which, the first amendment application is still pending before the Court. It is clear that proper procedure was not followed by the Trial Court.



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8. However, relief claimed in I.A.No.521 of 2018 to amend the prayer in the suit is pending. Before disposing I.A.No.1 of 2022, the Trial Court ought to have disposed I.A.No.521 of 2018 or both the applications in I.A.No.521 of 2018 & I.A.No.1 of 2022 ought to have been tied, heard and disposed jointly. Since without following the same, the Trial Court has erroneously allowed I.A.No.1 of 2022 *vide* impugned order dated 29.11.2022. Thus, the impugned order dated 29.11.2022 in I.A.No.1 of 2022 is liable to be set aside. The finding in I.A.No.1 of 2022 is set aside.

9. I.A.No.521 of 2018 for the same relief of amendment is still pending. The petitioners/defendants are entitled to raise their defence in the said application. The Trial Court is directed to tie and dispose both the applications jointly as expeditiously as possible.

10. This Civil Revision Petition is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

07.03.2023

Internet : Yes/No
Index: Yes/ No
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T.V.THAMILSELVI, J.

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To

The District Munsif Court,
Gudiyattam.

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