



CRP (PD) No.752 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2023

Pronounced on : 28.06.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

CRP (PD) No.752 of 2023 and
CMP No.5807 of 2023

Durairaj

... Petitioner

Vs.

1. The District Collector,
Ranipet.
2. The Tahsildar,
Revenue Department,
Arakkonam, Ranipet District.
3. Saraswathi
4. G.N.Reddy
5. V.G.Janarthanam
6. D.I Hemalatha

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, seeking to set aside the order and decretal order of dismissing the amendment petition in I.A.No.538 of 2022 in O.S.No.230 of 1998 dated 20.01.2023 on the file of the District Munsif Court, Arakkonam.



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For Petitioner : Mr.R.Karunakaran
For Respondent : Mr.M.R.Gokul Krishnan,
Additional Government Pleader
for R1 and R2
Mr.G.Jeremiah for R3 to R6

ORDER

This revision is directed against the dismissal of an Interlocutory Application in I.A.No.538 of 2022 in O.S.No.230 of 1998 on the file of the District Munsif, Arakkonam, Vellore District, dated 20.01.2023.

2. The facts that necessitated the petitioner to file the revision are that the petitioner has filed O.S.No.230 of 1998 on the file of the District Munsif, Arakkonam, Vellore District to restrain the respondents/defendants from interfering with the petitioner/plaintiff's peaceful possession and enjoyment of the suit schedule property. The respondent made appearance and filed written statement. The trial Court after full-fledged trial, framed issues and after completion of evidence, the suit was dismissed on 26.06.2007. Aggrieved by the dismissal of O.S.No.230 of 1998, the



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petitioner has preferred A.S.No.57 of 2007. On hearing both sides, the learned Subordinate Judge, Ranipet, set aside the order, dated 26.06.2007 and remanded the suit in O.S.No.230 of 1998 to the file of the District Munsif, Arakkonam, with a direction to conduct fresh trial and directed to appoint an Advocate Commissioner and dispose the same afresh. Pursuant to the same, the Advocate Commissioner was appointed and he has listed the schedule of property and filed his report. In the meanwhile, during the course of trial, the plaintiff has examined three witnesses and the matter was posted to further evidence and at that stage, the plaintiff filed a petition in I.a.No.538 of 2022 seeking for amendment of the plaint wherein the petitioner intends to seek for adding a relief of declaration of title. After full-fledged enquiry, the said petition came to be dismissed on 20.01.2023 by the learned District Munsif, Arakkonam. Aggrieved by the same, the petitioner is before this Court.

3. Heard both sides and perused the materials available on record including the orders passed by the trial Court and also the Judgment of the Appellate Court in A.S.No.57 of 2007.



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4. The learned counsel for the petitioner submitted that seeking declaration of title is required in order to settle all the issues pending between the parties at once otherwise it may lead to multiplicity of the litigation.

5. On the other hand, it is submitted by the learned counsel on record for the respondents/defendants that the relief of declaration which is sought to be incorporated, cannot be considered as the said claim is barred by limitation and that the petitioner has approached the Court at belated stage. Originally the petitioner has filed O.S.No.230 of 1998 against the two defendants namely the District Collector and the Tahsildar seeking the relief of permanent injunction restraining them not to interfere with the schedule of properties. During the pendency of the suit, the other three defendants namely D4, D5 and D6 were brought individually by impleading themselves in the said suit. However, as seen from the records, even though the defendants D4, D5 and D6 were impleaded, neither the plaintiff nor the impleaded defendants did not seek for amendment of the prayer. It is to be



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noted that the plaintiff has originally filed a suit seeking perpetual injunction only against D1 and D2 and even after impleadment of D3, D4, D5 and D6 if the relief is sought for by the plaintiff continues to be only against the defendants 1 and 2, thereby technically the impleadment of D3, D4 and D5 has become redundant. When the suit was filed in the year 1998, as already observed, that was filed only against D1 and D2 who were the District Collector and Tahsildar. They filed written statement stating that the suit is not maintainable as the plaintiff was not in possession of the schedule of property as on the date of filing of the suit and that the plaintiff was also not having title over any portion of the schedule of property and thereby without seeking declaration of title, the suit is not maintainable. The written statement was filed somewhere in the year 1999 and the date is not clear on record. Basing on the pleadings, the trial Court has framed issues as to whether the plaintiff is entitled for injunction against D1 and D2 therein and in respect of the said issue alone, the trial was commenced.

6. Once the defendants 1 and 2 have specifically taken a plea that the plaintiff is not entitled for the relief of injunction, without seeking a



relief of declaration of title, the cause of action arose to the plaintiff at that point of time only to seek for amendment of the plaint, but he has not filed petition for amendment of the plaint incorporating the relief of declaration of title.

7. The Judgment in A.S.No.57 of 2007 would go to show that the defendants 1 and 2, viz., the District Collector and Tahsildar have taken a specific plea that the suit is bad for not seeking a relief of declaration and further he has also referred the evidence of Deputy Tahsildar as D.W.1 recorded in the trial Court, wherein D.W.1 deposes that originally the suit schedule property was 'Thotti Maniyam' in the year 1966 and patta has been granted in respect of the said property in the name of Munikrishnan. Subsequently, the patta was modified as Ryotwari Pattaas under Abolition of Inam Act and thereafter the Government has purchased the said property for construction of a Railway over Bridge and thereby the Schedule of property is now classified as 'Adi Dravida Natham'. It is also the evidence of Deputy Tahsildar that Inam certificate granted to the schedule of property was cancelled under the provisions of Abolition of Inam Act by following the



proceeding there under. Therefore, the defendants 1 and 2 have put strong formidable defence stating that the plaintiff has no title over the schedule of property on which the plaintiff ought to have come forward to amend the plaint immediately after the written statement was filed. The defendants have filed certain documents in support of their contention to show the classification of schedule of the properties. Therefore, considering the above, as already concluded by the trial Court, the proposed amendment sought for by the plaintiff is certainly beyond limitation and therefore the relief certainly cannot be granted.

8. The other aspect which is required to be considered in this case is that the petitioner has approached the Court seeking for amendment at a belated stage. Order VI Rule 17 of C.P.C., permits the parties to the suit to seek for order for amendment of the pleading at any time during the proceedings of the suit. However, the rule is that the amendment or alteration shall not be proposed once the trial has been commenced. It is further stated in the provision that the proposed amendment shall be permitted in order to determine the dispute between the parties in the suit.



Considering the above provisions, it is required to be seen whether the request of the petitioner for amendment of the plaint will fit into the framework under Order VI Rule 17 of C.P.C., The petitioner can file an application for amendment of the plaint. The petitioner will not be able to convince the Court so far as the second part is concerned. The petitioner is expected to file a petition seeking amendment before commencement of trial.

9. In the case on hand, as discussed above, the trial was concluded and the case was also dismissed and subsequently it was remanded back to the trial Court. During the pendency of the suit, earlier to the previous dismissal, the petitioner did not chose to file this application even though he was supposed to do that. The petitioner has also not proposed to amend the plaint when the appeal was pending. even after the case was remanded back to the trial Court, the petitioner waited until trial to be commenced and three witnesses on his side were examined. On going through the contentions, the petitioner failed to explain as to the reasons why he has not taken any steps for amending the plaint when the suit was originally pending prior to the



dismissal of the suit and also remanded back to the trial Court. Therefore, the petitioner is not qualified to seek proposed amendment as per the second leg of the Order VI Rule 17 of C.P.C,

10. The third part of the Order VI Rule 17 is that the proposed amendment shall be in connection with the dispute between the parties and it shall be for the purpose of determining the real question in controversy between the parties. The petitioner has filed the suit for perpetual injunction against the defendants 1 and 2 originally. In case if the petitioner is proposing any amendment in respect of grant of perpetual injunction alone against the defendants 1 and 2, it can be considered to some extent, subject to other limitations. However, the petitioner by way of seeking amendment intends to change the very nature of the suit from simple suit for injunction to that of declaration of title. If that is allowed, the very nature of the suit including the prayer for Court fee, cause of action, will be changed and the defendants required to file additional pleadings, the trial has to be conducted *denova* and if the proposal amendment is allowed it is as good as filing a fresh case. Therefore, considering the above, when the proposed



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amendment touches the very nature of the suit, such kind of amendment would not be permitted.

11. In view of the discussions, the orders passed by the trial Court cannot be interfered with and the revision fails and it is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

28.06.2023

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Index: Yes/No

Speaking order / Non speaking order

To

1. The District Collector,
Ranipet.
2. The Tahsildar,
Revenue Department,
Arakkonam, Ranipet District.
3. The District Munsif Court,
Arakkonam



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DR.D.NAGARJUN, J.

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