



C.R.P.No.944 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

C.R.P.No.944 of 2023
and
C.M.P.No.7004 of 2023

Sriram

..Petitioner

Vs.

1.Malic

2.Thaj

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order in I.A.No.3 of 2022 in O.S.No.191 of 2019 dated 13.02.2023, on the file of the Principal District Judge, at Villupuram.

For Petitioner : Mr.P.Vasanth

For Respondents : Mr.C.Munusamy



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ORDER

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This revision is filed aggrieved by the order of dismissal of I.A.No.3 of 2022 filed by the plaintiff seeking to amend the plaint under Order VI Rule 17 of the Code of Civil Procedure.

2. Originally the petitioner has filed a suit for declaration that the plaintiff is the absolute owner of the 'D' schedule property and sought for consequential permanent injunction. It is submitted that subsequent to the filing of the suit, the respondents/ defendants came into possession of the schedule of the property, thereby sought for amending the plaint seeking the relief of recovery of possession. The respondents have filed a detailed counter and after hearing both sides the trial Court has ultimately dismissed the application. Aggrieved by the same the present revision is filed.

3. It is submitted by the learned counsel for the petitioner that though initially he has filed the suit for perpetual injunction subsequently the respondent has encroached the schedule of property and thereby in order to avoid multiplicity of litigations, he has sought for amendment.



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4. The learned counsel for the respondents/ defendants has vehemently submitted that if the amendment as proposed by the petitioner is allowed, it would amount to changing the very nature of the suit and that once the pleadings are completed and evidence has commenced, the amendment shall not be proceeded with, therefore sought for dismissal of the revision.

5. The general principle in respect of amendment of the pleadings is that the parties of the petition are expected to complete the pleadings in all respects and once the pleadings are completed, the trial Court will frame issues basing on the pleadings and the relief sought for, which will become basis for the parties before the Court to produce the evidence both oral and documentary. Therefore, once the pleadings are completed and the trial has commenced, the pleadings shall not be permitted to be amended, except certain circumstances.

6. It is the specific case of the respondents that even prior to the filing of the suit they have given a legal notice to the petitioner



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stating that they are in possession of the property. The respondents/defendants have also filed a written statement specifically mentioning that the defendants are in possession of the schedule of the property and not the plaintiff. Once the defendants have issued notice prior to the filing of the suit, the plaintiff should have considered filing the suit directly for declaration and for recovery of possession. Once the written statement is filed by the defendants stating that the defendants are in possession of the property and not the plaintiff, then atleast at that stage the petitioner should have made an attempt to amend the plaint. However, the petitioner allowed the trial to commence and after evidence of PW1 was recorded, then this application came to be filed.

7. On considering the consequences as narrated above, it is clear that the petitioner/ plaintiff did not specifically chose to file the petition for amendment of the plaint and only after cross-examination of PW1, amendment petition is filed. Further in case if the suit is amended to that of converting the declaration suit into a suit for declaration and recovery of possession, the very complex nature of the suit will be changed.



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8. The petitioner has proposed number of amendments to the pleadings along with adding the relief of recovery of possession. On going through the contents of the proposed amendment, it is clear that the petitioner has almost re-written the plaint which will change the nature of the suit itself. Considering the circumstances, the trial Court has rightly and broadly discussed the issue in respect of the proposed amendments and declined the same.

9. It is submitted by the learned counsel for the petitioner that in case if this proposed amendment is declined the petitioner is left with no option expect to file separate suit for recovery of possession. It is true that the petitioner may ultimately end up filing a suit for recovery of possession, however merely because plaintiff had to file one more suit for recovery of possession, the proposed amendment by the petitioner after commencement of the trial cannot be permitted.



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Dr.D.NAGARJUN, J.

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10. In view of the above, this Court do not find any merits in this revision, and accordingly the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

30.06.2023

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Index :Yes/No

Internet :Yes/No

Neutral Citation :Yes/No

Speaking order/Non-Speaking order

To:-

The Principal District Judge, Villupuram.

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