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C.R.P.No.3687 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3687 of 2023

Venkatachalam

... Petitioner

-Vs-

1.Aadhi Moorthy

2.The President
Alathur Panchayat
Alathur Post
Villupuram Taluk.

3.The Thasildhar
Taluk Office, Villupuram.

4.The District Collector
Office of the District Collectorate
Villupuram.

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C., praying to set aside the order made in I.A. No.158/2020 in O.S. No.423/2010 on the file of the Additional District Munsif, Villupuram by allowing the application.

For Petitioner

:

Mr.S.Mohana Sundara Rajan



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ORDER

Challenging the impugned order passed in I.A.No.158 of 2020 in O.S.No.423 of 2010 by the learned Addl. District Munsif, Villupuram, the Revision Petitioner/Plaintiff preferred this Civil Revision Petition.

2. Since the relief sought challenging the order of trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the plaintiff filed a suit for permanent injunction and other consequential relief. During the pendency of the proceedings, he filed an application to amend the prayer in respect of mandatory injunction to remove the encroachment said to be made by the defendants. That application was allowed and the case was posted for carrying out the amendment and to file amended plaint copy, but due to covid period, he was not able to file the amended copy of plaint before the trial court. After revocation of lock down, he filed the application to receive the amended copy of plaint, but there is a delay of 683 days. Hence, he filed the application to condone the delay and that application was returned by the trial judge to produce the amended copy of plaint along with the



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said application, but it was not complied due to lack of communication.

Subsequently, that application was dismissed by the trial judge stating that inspite of opportunity given to the plaintiff, he has not produced the amended copy of plaint and the reason for the delay is also not acceptable one. Challenging the, same, the present Civil Revision Petition has been filed.

4. The learned counsel for Revision Petitioner would submit that trial judge while dismissing the application to condone the delay, also dismissed the suit erroneously for the reason that if the amendment is not carried out, the trial court can proceed with the original plaint with regard to other reliefs instead of that, the suit itself was dismissed, which is erroneous one. Hence, he prayed to set aside the findings of the trial judge.

5. On perusal of records, it would reveals that the suit was filed by the plaintiff long back in the year of 2010 for the relief of permanent injunction and subsequently, he wanted to add the prayer of mandatory injunction. To that effect, the trial court permitted, but the plaintiff has not produced the amended copy of the plaint. However, there is a delay of 683 days on his part. Admittedly, he stated the reason to condone the delay is that he was suffered with jaundice. Therefore, the trial judge is not inclined



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to accept the reason for the delay. Furthermore, on perusal of records, it reveals that the trial judge dismissed the entire suit for not filing the amended copy of plaint, as such is erroneous one. In support of his contentions, the Revision Petitioner relied on the ratio laid down by this court in the authority reported in **2002 (1) CTC 129**, in the case of **S.Selva Raj vs. Mrs. S.Mary and 5 others**, wherein in para 10 of the judgment, this court held as follows :-

“10. This squarely applies to the present case. The fact that the suit was also periodically adjourned along with the amendment application cannot be denied. The question is whether the suit itself was posted for hearing on 25.7.1990. The order of the appellate judge also seems to indicate that on that date, normally only the counsel is expected to appear and carry out amendments. If the first respondent, who is the deponent of the affidavit had been present on that date, may be, the suit would not have been dismissed for default. But, she was not expected to be present and in any event, the reason given by her that it is only because she could not take leave was also accepted by the appellate court. It is also



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evidence from the dates, that immediately thereafter, they have filed an application under Order 9, Rule 9 C.P.C. It does not appear to me to be a case where the lower court had exercised its discretion on the ground of mercy nor has the reason given by the respondents for their absence on that date been proved to be false. In these circumstances, I do not think, the order of the court below should be interfered with. CRP is therefore dismissed.....”

Referring the aforesaid decision, the arguments advanced by the learned counsel for Revision Petitioner is acceptable one. Therefore, the reason assigned by the trial judge is liable to be set aside. Furthermore, to file the amended copy of plaint, opportunity is to be given to the plaintiff and if the opportunity is not given to him to submit the same, his valuable right to defend the case will be defeated. On perusal of records, already he was permitted to carry out amendment in respect of amended prayer and the plaintiff can avail all the remedies to protect his right in the property and if such opportunity is not given, he will be put into much hardship. Therefore, this court is inclined to set aside entire findings rendered in I.A.No. 158 of 2020 in O.S.N. 423 of 2010 on the file of learned Addl.



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District Munsif, Villupuram and the plaintiff is directed to file the amended copy of the plaint within a period of two weeks from the date of receipt of copy of this order. Liberty is granted to the defendant to file his additional written statement before the trial court and on hearing both sides, the trial judge is directed to dispose the suit as expeditiously as possible. Accordingly, this Civil Revision Petition is allowed. No costs.

17.10.2023

Index : Yes/No
Speaking Order : Yes/No
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To

1. The Additional District Munsif, Villupuram.
2. The President, Alathur Panchayat
Alathur Post, Villupuram Taluk.
3. The Thasildhar, Taluk Office, Villupuram.
4. The District Collector
Office of the District Collectorate, Villupuram.
5. The Section Officer, V.R. Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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