



CRP (MD) No.377 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	16.08.2023
Pronounced on	15.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.377 of 2022
and
CMP(MD)No.1662 of 2022

Cheltan

... Petitioner

Vs.

Ponmani

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 10.12.2021 passed in I.A.No.3 of 2019 in O.S.No.168 of 2018 on the file of the II Additional District Munsif Court, Tirunelveli.

For Petitioner : Mr.S.Velrajan

For Respondent : Mr.T.Lenin Kumar



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ORDER

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This civil revision petition is preferred as against order dated 10.12.2021 passed in I.A.No.3 of 2019 in O.S.No.168 of 2018 on the file of the Second Additional District Munsif Court, Tirunelveli District.

2. The said I.A.No.3 of 2019 was filed by the revision petitioner under Order 6 Rule 7 and Section 151 of CPC to amend the plaint for the relief of declaration and recovery of possession along with other consequential amendments. According to the revision petitioner, the suit in O.S.No.168 of 2018 was filed for the relief of permanent injunction. The respondent/defendant in their written statement disputed the title of the petitioner/plaintiff in the suit property and therefore, it is necessary to include the prayer for declaration of title and recovery of possession in respect of the suit property by way of amendment. The trial Court without considering the above fact, erroneously dismissed the above application. Aggrieved by this, the present revision is filed.



3. The learned counsel appearing for the revision petitioner would submit that an application under Order 6 Rule 17 CPC enable the parties to amend their pleadings at any stage of the proceedings. He would submit that the documents filed on the side of the respondent/defendant as proof of title, are not actually establishing her title. It is further submitted that the trial Court failed to take note of the fact that even in the written statement filed by the respondent/defendant, it is mentioned that the petitioner/plaintiff failed to seek the prayer of declaration, since there is a title dispute in respect of the suit property. The learned counsel would further submit that as per Section 34 of the Specific Relief Act, 1963, when there is any dispute with regard to title, the person is entitled to file the suit against the person, who denies the title of the person claiming it. He would further submit that the petitioner/plaintiff in the plaint claimed his right in the suit property by way of a registered document and therefore, the trial Court ought to have allowed the amendment petition in order to avoid the multiplicity of proceedings between the parties. Therefore, the order passed in I.A.No.3 of 2019 is liable to be set aside.



4. On the other hand, the learned counsel appearing for the respondent would contend that the defendant is in possession and enjoyment of the suit property from the year 1998 by constructing a thatched house and also obtained the electricity connection. Therefore, the contention of the plaintiff that only in the year 2018, the respondent/defendant has encroached the suit property, is utter false and moreover in the first amendment petition filed in I.A.No.1 of 2019, the above fact is not stated by the plaintiff. The present amendment petition is filed only to drag on the proceedings and therefore, the Court below has rightly dismissed the application, which calls for no interference.

5. Heard on both sides and records perused.

6. The suit in O.S.No.168 of 2018 was filed in the year 2018. The respondent/defendant has filed his written statement on 02.08.2018, in which, the defendant has claimed title over the suit property. However, the application for amendment was filed in the year 2019. As per Order 6 Rule 17 of CPC, the Court may at any stage of the proceedings allow either party



to alter or amend his pleadings in such manner which are necessary for the purpose of determining the real questions in controversy between the parties.

It is well settled that amendment in the pleadings cannot be refused mere because of some mistake, negligence, inadvertence or even in fraction of the rules of procedure. The Court always leave to amend the pleadings even if a party is negligent or careless as the power to amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitation, when the plaint is not properly drafted. The leave to amend the pleadings may be refused only if it introduces a totally different new, an inconsistent case or changes the fundamental character of the suit. The right to sue for declaration of title and recovery of possession first arose on the facts of the present case on 02.08.2018. The application to amend the plaint was filed on 22.03.2019 which is within the limitation period.

7. According to the plaintiff, only after filing the written statement by the defendant, came to know about the fact that the title of the suit property is also disputed by the defendant. By granting the said amendment, it would really sub-serves the ultimate cause of justice and avoids further litigation.



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Moreover, an amendment seeking declaration of title, shall not introduce a different relief, when the necessary factual basis had already been laid down in the plaint in regard to the title. Therefore, the trial Court ought to have allowed the amendment petition in respect of the prayer for declaration and recover of possession.

8. In the result, this Civil Revision Petition is allowed and the order impugned in I.A.No.3 of 2019 in O.S.No.168 of 2018 on the file of the Second Additional District Munsif Court, Tirunelveli, is set aside and the same is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

15.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The II Additional District Munsif,
Tirunelveli.

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