



CRP(MD).No.504 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No.504 of 2023
and
C.M.P(MD).No.2426 of 2023

P.Periaya .. Petitioner/Respondent/Defendant

Vs.

1.M.Shanmugam
2.M.Rangaiah .. Respondents 1 & 2/Petitioners 1 & 2/Plaintiffs 1 & 2
M.Ramadoss (died)
3.M.Meiyappan
4.Manimegalai
5.Dinesh
6.Keerthiga .. Respondents 3 to 6/Petitioners 4 to 7/Plaintiffs 4 to 7

PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order of the learned District Munsif, Devakottai, dated 29.08.2022 in I.A.No.14 of 2022 in O.S.No. 106 of 2015.

For Petitioner : Mr.Vr.Shanmuganathan

ORDER

The present revision petition has been filed by the defendant in a suit for declaration of title and permanent injunction. When the suit was posted for cross-examination of P.W.3, the plaintiffs have filed



I.A.No.14 of 2022 to amend the body of the plaint and the plaint schedule so as to incorporate the fact that there is a building in the suit schedule property. It is the case of the plaintiffs that they have put up construction pending suit. However, the defendant in his written statement itself has pointed out that already a house property is located in the suit schedule and it belongs to the defendant.

2. The learned trial Judge, after considering the submissions made on either side, has arrived at a finding that mere inclusion of a building in the schedule of property will not alter the cause of action or it will not amount to introduction of new cause of action. Based upon the said findings, the trial Court allowed the amendment application. Challenging the same, the present revision petition has been filed.

3. According to the learned counsel appearing for the revision petitioner/defendant, the suit is posted for cross-examination of P.W.3 and therefore, after commencement of trial, without complying with due diligence as per proviso to Order 6 Rule 17 of the Code of Civil Procedure, the present amendment application has been filed and the same has also been allowed. Therefore, according to the learned counsel for the petitioner, the trial Court has no jurisdiction whatsoever to



consider such kind of applications, which are filed after commencement of trial and when there are no pleadings relating to due diligence.

4. I carefully considered the submissions made on the side of the petitioner/defendant and I have gone through the affidavit.

5. It is the specific case of the plaintiffs that they have put up construction in the suit schedule property only pending suit. The construction has also been pointed out by the Advocate Commissioner in his report. The defendant also admits that there is a building in the suit schedule property, but contends that the building belongs to the defendant. Therefore, there is no dispute between the parties with regard to the existence of the building in the suit schedule property. In such circumstances, the inclusion of the building in the suit schedule property and amendment of the body of the plaint so as to refer the building would not alter the cause of action or it would amount to introduction of new cause of action. Therefore, the trial Court was right in allowing the amendment application. However, in view of the introduction of new paragraph in the plaint and amendment of schedule of property, the defendant would be entitled to file an additional written statement. After providing due opportunity of the defendant to file additional written



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statement and let in any further evidence in this regard, the learned District Munsif, Devakottai, is directed to dispose of the suit in O.S.No. 106 of 2015 on merits and in accordance with law.

6. Considering the aforesaid facts, the trial Court is directed to permit the defendant to file additional written statement and to recall P.W.1 with regard to the amendment of the plaint and thereafter, proceed in accordance with law.

7. With the above observation, the Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

28.02.2023

Index : Yes / No
Internet : Yes / No
Rmk

To
The District Munsif, Devakottai.



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R.VIJAYAKUMAR ,J.,

Rmk

Order made in
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28.02.2023