



C.R.P.(MD)No.1146 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1146 of 2019

and

C.R.P.(MD)No.6215 of 2019

1.Anthonymmal Mankayarkarasi

2.Babu Janakiram ... Petitioners / Petitioners/Plaintiffs

Vs.

M.M.Ahamed ... Respondent / Respondent/Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decree, dated 09.04.2019, passed in I.A.No.4 of 2019, in O.S.No.301 of 2013, on the file of the Additional District Munsif, Tenkasi, Tirunelveli District.

For Petitioners : Mr.B.Prahald Ravi

For Respondent : Mr.M.P.Senthil

ORDER

The instant Civil Revision Petition has been filed against the order, dated 09.04.2019, passed in I.A.No.4 of 2019, in O.S.No.301 of 2013, on the file of the Additional District Munsif, Tenkasi.



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2. The revision petitioners herein are the petitioners /plaintiffs and the respondent herein is the respondent /defendant before the Court below.

3. For the sake of convenience, the parties are referred to according to their litigative status before the Court below.

4. It appears that the plaintiffs have filed an application for the relief of permanent injunction in the year of June 2013. The said suit was resisted by the defendants by filing written statement during 2013 itself. In the written statement, the plaintiffs have also sought for a counter claim that the second schedule property is the public passage. In the meanwhile, the defendants moved an application for amendment during 2019, so as to seeking a prayer for declaration in respect of the schedule of property.

5. It is pertinent to mention here that the said amendment was sought for, when the suit was posted for the defendant's side argument.



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The said application was resisted by the defendant by contending that the application has been filed only to delay the proceedings and that the such amendment will alter the nature of the suit, therefore, prayed to dismiss the application.

6. However, the Court below has dismissed the application, since the amendment application has been filed after the commencement of the trial and that there are no material available to prove their due diligence. In addition to the above finding, the Court below has also dismissed the application on the ground of limitation.

7. Aggrieved with the said finding, the plaintiffs have approached this Court by way of this Civil Revision Petition.

8. I have given my anxious consideration to the either side submissions.

9. If we appreciate the facts of the present case, it is incumbent upon this Court to answer whether the findings of the Court



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below as to the absence of due diligence in filing the amendment application, and that the amendment sought for is hit by limitation, is correct or not.

10. Let us take the challenge in respect of Limitation Act first.

If we see the amendment application, admittedly, the amendment was sought during 2019, though the suit was filed during 2013. However, the amendment sought for is only in respect of the prayer, to put it differently, the petitioners did not change the character or nature of the suit, by amending the plaint with additional pleading. But, they only wanted a change in the nature of relief. Therefore, by referring the judgment of the Hon'ble Supreme Court reported in ***AIR-1957-SC-357 (L.C.Leach & Co.Ltd V. Jardine Skinner & Co.)***, this Court hold the findings in respect of limitation is erroneous.

11. But, coming to the second aspect, qua whether the petitioners have shown any justifiable reason for not filing the application at the earliest point of time, there is no answer in the affidavit. According to the affidavit, the only reason put forth by the



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plaintiffs is that, the defendant has disputed the maintainability of the suit for injunction, in the absence of prayer for the relief of declaration. Only based upon the said contention, the petitioner has come forward with the amendment application.

12. It is pertinent to mention here that, at the time of filing of the instant amendment application, the suit was in the advanced stage of trial proceedings and posted for defendant's side argument. Admittedly, the written statement was filed during 2013, therefore, as rightly observed by the Court below, obviously there is no reason for not filing the amendment application well before in time. Therefore, as per the proviso to Order 6 Rule 17 C.P.C, unless the Court has come to the conclusion that, there exist some reason for the delayed filing of application, the after trial amendment cannot be allowed.

13. Here, the plain reading of the affidavit disclose no reason as to why the amendment have not been filed before commencement of the trial. Therefore, though this Court gives a finding that the amendment is not hit by the limitation, in view of the absence of due



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diligence on behalf of the plaintiffs, the dismissal order passed by the Court below, is liable to be confirmed.

14. Therefore, this Court finds no infirmity in the order passed by the Court below. In the result, the instant Civil Revision Petition stands **dismissed**. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

11.09.2023

NCC : Yes/No
Index : Yes/No
Ls

To

- 1.The Additional District Munsif,
Tenkasi.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

Order made in

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