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C.R.P(PD)(MD).No.327 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.06.2023

Pronounced on : 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.327 of 2018

and

C.M.P(MD)No.1528 of 2018

- 1.Iyyappan
- 2.Pandiyan
- 3.Ravi
- 4.Kavitha
- 5.Kaliammal
- 6.Murugan
- 7.Vijayal

... Revision Petitioners/Plaintiffs

Vs.

- 1.Chandran
- 2.Kaliammal
- 3.Tashildhar

4.The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

5.The Collector,
Sivagangai,
Sivagangai District.

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order dated 20.09.2017 made in I.A.No.455 of 2017 in O.S.No. 112 of 2011 on the file of the Subordinate Court, Devakottai and set aside the same and allow the present Civil Revision Petition.



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For Petitioners : Mr.J.Anandkumar
For R1 & R2 : No Appearance
For R3 to R5 : Mrs.K.Christy Theboral
Additional Government Pleader

ORDER

This Civil Revision Petition is filed against the fair order and decreetal order dated 20.09.2017 made in I.A.No.455 of 2017 in O.S.No. 112 of 2011 on the file of the Subordinate Court, Devakottai.

2. The brief facts of the case:

The revision petitioners are the petitioners in I.A.No.455 of 2017 in O.S.No.112 of 2011 on the file of the Subordinate Court, Devakottai. The petitioners have filed the main suit for permanent injunction against the respondents from interfering with the worship of the petitioners and his family members in the temple situated in the suit property. The respondents 1 and 2, who are the defendants 1 and 2 in the main suit have filed written statement specifically stated that the suit for injunction is not maintainable without prayer of declaration as the plaintiffs claimed right over the temple situate in the suit property. Therefore, the petitioners have filed a petition in I.A.No.455 of 2017 to amend the plaint for inserting the relief of declaration in respect of sale deed dated 07.10.2002 as null and void and also another declaration that the suit property belonged to the plaintiffs. The respondents



filed the counter. After hearing both, the Trial Court has dismissed the petition on 20.09.2017. Aggrieved by the order of the Trial Court, the petitioners moved this Court by way of this Civil Revision Petition.

3. Heard the petitioners side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioners has submitted that the defendants 1 and 2 have taken specific plea in their written statement and cross-examined the P.W.1 that the suit for bare injunction is not maintainable without any declaratory relief over the suit temple and that the petitioners have no right over the suit temple. Hence, the petitioners have filed the amendment petition in I.A.No.455 of 2017 to insert the reliefs of declaration in respect of sale deed dated 07.10.2002 as null and void and also another declaration that the suit property belonged to the plaintiffs. The petitioners have not introduced any new pleading and they wanted to add additional reliefs of declaration based on the contention of the defendants. The amendment sought for by the petitioner would not change the nature of suit or cause of action. It is settled principle that where amendment sought is only with respect of relief in plaint and is predicated on facts which are already pleaded in plaint, such amendment is required to be allowed and the court is required to be liberal in its approach and



amendment can be allowed at any stage. In support of his arguments, the learned counsel for the petitioners has relied on the decision of the **Hon'ble Apex Court** reported in **(2022) 0 AIR (SC) 4256** in **“Life Insurance Corporation of India /v/ Sanjeev Builders Private Limited and anr.”**

The Trial Court has failed to consider the above facts and the guidelines issued by the Hon'ble Supreme Court. The counsel further submitted that the respondents 1 and 2 have not contested this revision petition before this Court and they remained absent and the respondents 3 to 5 are formal parties. Therefore, the impugned order has to be set aside and the amendment sought for by the petitioners may be allowed.

5. On hearing both and on perusal of order of Trial Court, it is clear that the petitioners have filed the main suit seeking the relief of permanent injunction in respect of worship in the suit temple. The defendants 1 and 2 have filed their written statement contending that the suit seeking bare injunction without declaratory relief of right over the temple, is not maintainable. Of course, during cross examination of P.W.1 he was questioned about the declaratory relief of right. Hence, the petitioners want to amend the relief. The Trial Court has dismissed the petition stating that the petition is filed belatedly and to drag on the suit proceedings further. In the decision relied on the petitioners side, the Hon'ble Supreme Court has



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clearly held that delay in applying for amendment alone is not a ground to disallow the prayer and the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint ordinarily the amendment is required to be allowed. On perusal of the citation relied on by the learned counsel for the petitioners squarely applicable to the facts of this case. Further, the respondents have not stated anything that the petitioners want to introduce new pleading. The Trial Court has also not stated in the impugned order that the petitioners have introduced any new pleadings so as to set up a new case. Therefore, in the above facts and circumstances the impugned order of the Trial Court is incorrect and the same is liable to be interfered by way of this Civil Revision Petition.

6. In the result, this Civil Revision Petition is allowed. The order of the Trial Court passed in I.A.No.455 of 2017 in O.S.No.112 of 2011 on the file of the Subordinate Court, Devakottai is set aside and the said petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd



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To

- 1.The Subordinate Court,
Devakottai
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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