



C.R.P.(PD)(MD)No.427 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 11.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.427 of 2018

and

C.M.P(MD) No.1889 of 2018

1. Kanthasamy

2. Appasamy

... Revision Petitioners/
Respondents 1 and 2/
Defendants 1 and 2

-vs-

1. Nalayini

2. Saranyadevi

... Respondents 1 and 2/
Petitioners/Plaintiffs

3. The Secretary,
Thili Thani. 55,
Kadambur Primary Agricultural
Cooperative Society,
Kadambur – 628 714,
Thoothukudi District.

... 3rd Respondent/3rd Respondent
/3rd Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 28.04.2017 passed in I.A.No.699 of 2016 in O.S.No.172 of 2015 on the file of the District Munsif Court, Kovilpatti, Thoothukudi District.



C.R.P.(PD)(MD).No.427 of 2018

For Petitioners : Mr.R.J.Karthick

For Respondents : Mr.M.P.Senthil – for R1 and R2
: No appearance – for R3

ORDER

The instant Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.04.2017 passed in I.A.No.699 of 2016 in O.S.No.172 of 2015 on the file of the District Munsif Court, Kovilpatti, Thoothukudi District.

2. The revision petitioners are the defendants 1 and 2 before the trial Court. The plaintiffs filed a suit for permanent injunction and other reliefs.

3. It appears that, after filing the written statement by the petitioners, the plaintiffs filed an application in I.A.No.699 of 2016 for amendment of pleadings so as to incorporate the additional pleadings in the plaint. The said application was objected by the petitioners herein on the ground that the suit is on the part heard stage.



C.R.P.(PD)(MD).No.427 of 2018

WEB COPY

4. It is also the submission of the learned counsel for the petitioners that the learned trial Judge without considering the ratio of the reported judgments allowed the application. Therefore, the very order of the learned trial Judge is liable to be interfered with.

5. However, the learned counsel appearing for the respondents 1 and 2 invited the attention of this Court in respect of the counter statement filed by the first respondent. Wherein, he referred para No.3 that the trial has not been commenced in the main suit and what was marked only in the interlocutory application in I.A.No.831 of 2015.

6. From the submission of the respondent, it is apparent that the very amendment sought for by the petitioners is a pre-trial amendment, and that though the learned trial Judge has referred only the head notes, without referring the relevant discussion of the reported judgment, has applied the right ratio while ordering the amendment application. The relevant portion of the judgment of the Hon'ble Supreme Court reported in **2008 (14) SCC 364 (Rajkumar Gurawara (Dead) through Lrs. Vs. M/s.S.K.Sarwagi & Company Pvt.Ltd., and another)** in paragraph Nos.13 and 18 is extracted



C.R.P.(PD)(MD).No.427 of 2018

hereunder:-
WEB COPY

“13. To put it clear, Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the court to satisfy the conditions prescribed in the proviso.

18. Further, it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from



C.R.P.(PD)(MD).No.427 of 2018

the second defendant. It is settled law that the grant of application for amendment be subject to certain conditions, namely (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation. The plaintiff not only failed to satisfy the conditions prescribed in proviso to Order 6 Rule 17 but even on merits his claim is liable to be rejected. All these relevant aspects have been duly considered by the High Court and rightly set aside the order dated 10.03.2004 of the Additional District Judge.”

7. In the above judgment, the Hon'ble Supreme Court has held that the pre-trial amendment has to be allowed liberally. Even in the case on hand, the amendment which is sought for by the plaintiffs, is admittedly a pre-trial amendment. Therefore, this Court is of the firm opinion that the very impugned order passed by the learned trial Judge is well considered one and this Court has not found any ground to interfere with.



C.R.P.(PD)(MD).No.427 of 2018

WEB COPY

8. In the result, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

11.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The District Munsif Court,
Kovilpatti,
Thoothukudi District.



WEB COPY



C.R.P.(PD)(MD).No.427 of 2018

C.KUMARAPPAN,J.

ebsi

C.R.P(PD)(MD)No.427 of 2018

11.07.2023