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C.R.P(PD)(MD).No.464 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.06.2023

Pronounced on : 24.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.464 of 2018

and

C.M.P(MD)No.2086 of 2018

Natarajan

... Petitioner/Plaintiff

Vs.

1.Kalimuthu

2.Ramu

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.03.2017 made in I.A.No.441 of 2016 in O.S.No.116 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Thiruvadanai.

For Petitioner : Ms.Geetha
for Mr.V.Angusamy

For Respondents : Mr.M.Kannan



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ORDER

This Civil Revision Petition is filed against the order dated 20.03.2017 passed in I.A.No.441 of 2016 in O.S.No.116 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Thiruvadanai.

2. The brief facts of the case:

The revision petitioner is the petitioner in I.A.No.441 of 2016 in O.S.No.116 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Thiruvadanai. The petitioner has filed a main suit against the respondents for removing the compound wall constructed in the suit property and for handing over the same to the petitioner. The respondents have filed their written statement denying the plaint averments. Pending suit, the petitioner has filed the petition to amend the plaint averments and the existing relief sought in the plaint. The respondents objected the petition by filing a counter. After hearing both, the Trial Court has dismissed the petition on 20.03.2017. Aggrieved by the order of the Trial Court, the petitioner has preferred this Civil Revision Petition.

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



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4. The learned counsel appearing for the revision petitioner has submitted that the revision petitioner is the plaintiff, who filed the main suit for recovery of possession after removal of compound wall. The suit is pending at an early stage of trial. The petitioner sought certain amendments in the plaint, which would not change the very character of the suit. The Hon'ble Supreme Court has laid down the principle that if the amendment is required for effective and proper adjudication of the controversy between the parties and to avoid multiplicity of proceedings the amendment has to be allowed. In this present case also the amendment sought in this petition is necessary for deciding the issue. In order to avoid a multiplicity of proceeding between parties, the amendment may be allowed. The Trial Court has not considered the reason stated in the affidavit and counter but simply dismissed the petition. Therefore, the amendment sought for by the petitioners may be allowed. In support of his argument, the learned counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court delivered in Civil Appeal No.5909 of 2022 dated 01.09.2022 (Life Insurance Corporation of India /v/ Sanjeev Builders Pvt. Ltd., & Anr.), wherein it is held in paragraph No.70 (iii) as follows:

“70.Our final conclusions may be summed up thus:

(iii) The prayer for amendment is to



be allowed;

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

5. Per contra, the learned counsel for the respondents vehemently contended that originally the revision petitioner filed the plaint for removal of compound wall stating some measurements. Now the revision petitioner wanted to alter the measurement and wanted to include a new pleading and a new relief column, which changed the character and cause of actions of the suit. The revision petitioner has not stated any valid reason for amendment. He has only stated absentmindedness, which is not a valid reason. The amendment sought by the revision petitioner is almost the alteration of plaint and if the same is permitted the defendants will be highly prejudiced.



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6. On hearing both and on perusal of order of the Trial Court, it is clear that the revision petitioner has stated in the affidavit due to absentmindedness he omitted to aver pleadings while preparing plaint. On perusal of affidavit and the particulars sought to be amended would change the entire character of the plaint and even cause of action of the plaint and they introduced many new pleadings including the period and year of cause of action. Merely stage of the suit does not mean allowing amendments mechanically and there would be valid reason. On perusal of the citation relied on by the learned counsel for the revision petitioner, the Hon'ble Supreme Court has clearly held in its conclusions in paragraph No.70 (x) that where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed and where, however, 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 records of this case, it is clear that the revision petitioner wants to introduce new pleadings which change the nature of the suit and changes the cause of action as stated supra. In this case, there is no valid reason assigned by the revision petitioner. So, considering the principles as laid down by the Hon'ble Supreme Court, the amendment sought by the



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revision petitioner must be disallowed. Therefore, in the above facts and circumstances, the impugned order of the Trial Court is correct and the same is not liable to be interfered.

7. In the result, this Civil Revision Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

24.07.2023

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

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To

- 1.The District Munsif-cum-Judicial Magistrate,
Thiruvadanai.
- 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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