



C.R.P(MD)No.850 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.850 of 2024

and

C.M.P(MD)No.4748 of 2024

Muthuraja

... Petitioner /
2nd Respondent /
2nd Respondent

Vs.

A.C.Balan @ Balasubramanian (Died)

1.Vijaya Lakshmi

2.Anbuselvi

3.Karthikeyan

... Respondents 1 to 3 /
Petitioners 2 to 4 /
Appellants 2 to 4

4.M.Dhanushkodi

... 4th Respondent /
1st Respondent /
1st Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set-aside the fair and Decreetal order dated



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04.08.2023 passed in I.A.No.475 of 2022 in A.S.No.9 of 2019, by the IV Additional District Court, Madurai allowing amendment of plaint at the appeal stage, allow the above C.R.P.

For Petitioner : Mr.N.Marimuthu
for Mr.S.Ramu

For Respondents : Mr.N.Vallinayagam

ORDER

Heard both sides.

2.This Civil Revision Petition is directed against an order allowing amendment of plaint at the first appeal stage.

3.Thiru.A.C.Balan @ Balasubramanian filed O.S.No.634 of 2011 on the file of II Additional Sub Court, Madurai seeking the relief of permanent injunction. The plaintiff examined himself as PW.1. Two other witnesses were examined on his side. Exs.A.1 to A.12 were marked. On the side of the defendants, three witnesses were examined.



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4.After considering the evidence on record, the trial Court vide judgment and decree dated 07.08.2018 dismissed the suit. Aggrieved by the same, A.S.No.9 of 2019 was filed before the IV Additional District Judge, Madurai. During the pendency of the appeal, the plaintiff passed away. His legal heirs came on record. They filed I.A.No.475 of 2022 for amending the plaints. IA was allowed on 04.08.2023. Questioning the same, the second defendant filed this Civil Revision Petition.

5.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of revision and called upon this Court to set aside the impugned order and grant relief as prayed for.

6.Per contra the learned counsel appearing for the appellants in A.S.No.9 of 2019 submitted that the impugned order is a discretionary relief granted by the first appellate Court and that it does not warrant interference. He relied on quite a few decisions of this Court as well as the Hon'ble Supreme Court to contend that the plaint amendment can be



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done even at the stage of first appeal. He called upon this Court to dismiss the Civil Revision Petition.

7.I carefully considered the rival contentions and went through the materials on record.

8.The legal proposition advanced by the learned counsel appearing for the contesting respondents is beyond cavil. It is true that a plaint can be amended even at the appellate stage. The only question that calls for consideration is whether in this case the plaint was rightly allowed to be amended.

9.As rightly noted, the suit was one for declaration and permanent injunction. The plaintiff sought declaration that the sale deed dated 23.01.2009 executed by D.1 in favour of D.2 and the one executed on 09.02.2009 are invalid. To obtain the relief of permanent injunction, the plaintiff was obliged to show that he was in possession of the suit property on the date of filing of the suit.



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10.In the affidavit filed in support of I.A.No.475 of 2022, the appellants have claimed that at the time of filing of the suit, this revision petitioner had not occupied any portion of the property covered under Exs.A1 to A3 and that encouraged by the dismissal of the suit this revision petitioner committed encroachment sometime in the middle of 2019 by putting up arch and gate at the entry point of East-West Road and the West and that is why they have to amend the plaint and seek recovery of possession and mandatory injunction.

11.The trial Court in its judgment dated 07.08.2018 had rendered a categorical finding that A.C.Balan @ Balasubramanian figured as a second plaintiff in O.S.No.72 of 2009 on the file of District Munsif Court, Madurai Taluk seeking declaration and recovery of possession. The revision petitioner herein figured as the sole defendant in the said suit. The plaintiffs wanted to vary the valuation of the suit and transfer it to Sub Court, Madurai. To this effect, memo dated 08.12.2010 was also filed. This memo was marked as Ex.B5 in O.S.No.634 of 2011. Having done so, the plaintiff ought to have pursued O.S.No.72 of 2009. It appears that the plaint in the said suit was returned and it was never re-



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presented. There was no whisper about the filing of O.S.No.72 of 2009 in the plaint in O.S.No.634 of 2011. The trial Court had give elaborate findings in this regard. One of the prayers in O.S.No.72 of 2009 was for recovery of possession. It means that the plaintiff was not in possession even when he filed O.S.No.634 of 2011. That is why the learned trial Judge rendered a finding that the plaintiff ought to have sought for recovery of possession. Thus the suit was defective at the very outset. The Hon'ble Supreme Court in the decision reported in ***AIR 2008 SC 2033 (Anathula Sudhakar Vs P.Buchi Reddy (Dead) By Lrs & Others)*** held that if the plaintiff was not in possession of the suit property, he cannot maintain a suit for permanent injunction. O.S.No.632 of 2011 was defective at the very inception. Therefore, this finding has to be dislodged before any amendment can be permitted. Without dislodging this finding, amendment cannot be permitted. An application for amendment cannot be permitted to cure a fundamental lacuna.

12.In this view of the matter, the impugned order is set aside. This Civil Revision Petition is allowed accordingly. Since the Civil Revision Petition has been allowed, the appellants / plaintiffs are entitled to refund



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of the Court fee remitted by them for amendment. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.08.2024

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

IV Additional District Court, Madurai.



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G.R.SWAMINATHAN, J.

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