



C.R.P(PD)(MD)No.1732 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(PD)(MD)No.1732 of 2024

and

CMP(MD)No.10017 of 2024

Gandhi ... Petitioner/1st Respondent/1st Defendant

vs.

1.Kanagaraj ... Respondent/Petitioner/Plaintiff

2.Karuppasamy ... Respondent/2nd Respondent/2nd Defendant

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to revise and to set aside the Fair and Executable order passed in I.A.No.1 of 2024 in O.S.No.4 of 2020 dated 21.02.2024 in the Court of the District Munsif cum Judicial Magistrate Court, Kadaladi in Ramanathapuram District.

For Petitioner : Mr.J.M.Hassanul Bazari



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ORDER

The Civil Revision Petition is directed against the order in I.A.No.1 of 2024 in O.S.No.4 of 2020 dated 21.02.2024 on the file of the learned District Munsif cum Judicial Magistrate Court, Kadaladi in Ramanathapuram District.

2.The prayer in the said interlocutory application was to amend the suit. A perusal of the record filed along with the civil revision petition, originally, the plaintiff filed suit by describing the suit property as two items. In the first item, he has described four cents. In the second item, he has described 12 cents. He has claimed declaration and also consequential prayer of mandatory injunction in respect of first item. As far as the second item is concerned, he has claimed only declaration and consequential injunction. The suit was resisted by the defendants by not only filing a written statement, but also a counter claim. It is the claim of the defendants that the defendants alone are entitled to the properties. The defendants even in the written statement, have pleaded that they have put up



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superstructure even in the second item of the suit scheduled property and are living there. In the background of the same, when an Advocate Commissioner was appointed in the suit, the Advocate Commissioner has filed his report, which also revealed the stand of the defendants as correct and some of the constructions are there in the suit schedule 2 property also. Thereafter, now the plaintiff has filed the impugned interlocutory applications. The amendments, which are prayed for, are to unite the 1st and 2nd schedule property as one property and to ask for declaration and also mandatory injunction in respect of the entire property. The other amendments are with reference to formal amendments or with reference to amending wherever the words "தாவா 1 and 2 சொத்து" as "தாவா சொத்து".

3.The trial Court considered the amendments and allowed the same. As against which, the civil revision petition is filed.

4.*Mr.J.M.Hassanul Bazari*, the learned counsel appearing on behalf of the petitioner would submit that the amendments which are



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now carried on by the plaintiff changes the very nature of the suit. As a matter of fact, the plaintiff has expressly sought permission and amended the very cause of action and prayer paragraph itself. Therefore, if the nature of the suit is altered, the plaintiff should not be belatedly permitted to carry on such an amendment. As a matter of fact, considering the original claim of the plaintiff only, the counter claim of the first defendant is also filed. Therefore, belatedly, the amendment, which is now permitted, cannot be accepted. This apart, the reasons mentioned in the application filed for amendment as if the first defendant had subsequently encroached into the second item of the suit schedule property is blatantly false. As a matter of fact, the first defendant has pleaded about his occupation in the written statement itself. Even the Advocate Commissioner has found the superstructure, ie., the construction with the mud wall in the item two of the schedule property, that itself would adumbrate that the first defendant was in occupation of the item 2 property long ago and even before the filing of the suit. Therefore, there is also a question of limitation with reference to the said item of the property. Therefore,



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the trial Court without considering the same, allowed the application and as such this Court has to interfere.

5.I have considered the submissions made by the learned counsel for the petitioner and perused the material records of the case.

6.On a consideration of the original plaint and the schedule properties which are described in the plaint and the new amended schedule, I am of the view that except integrating the 1st and the 2nd item of the property, no new extent is brought by way of amendment. What is sought to be amended is with reference to the area in occupation of the defendants. The averment of the plaintiff is that subsequent to the suit, the first defendant has occupied the second item of the property also necessitating the amendment. The said amendment is resisted by the petitioner herein on the contention that he has specifically pleaded in the written statement itself about his occupation and with reference to the superstructures. The Commissioner has also confirmed the said superstructure. The nature



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of the superstructure also is the old one and therefore, the averment in the amendment is false. When it comes to the truth or otherwise with reference to the averments made in the amendment application, the same has to be tested by considering the version of the petitioner/1st defendant also, that can be done only at the time of the trial. The only question which has to be seen at the time of allowing the amendment is that whether or not it changes or alters the very nature of the suit or cause of action. In this case, originally also and after the amendment also, the title in respect of the very same property, which is in dispute. It is only, the area in occupation of the defendants, which is now sought to be altered by the plaintiff so as to claim the consequential relief.

7. In view thereof, I am of the view that the amendments do not change or alter the very nature of the suit and in view thereof, the order of the trial Court in allowing the amendment cannot be found fault with. The trial Court itself has given liberty to the petitioner/1st defendant to raise all the defences in the course of the trial. In view of



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the amendment, it will always be open for the petitioner/1st defendant to file additional written statement and such an opportunity shall be granted to the petitioner/1st defendant in view of the amendment of the plaint. In view thereof, for all the above findings, the Civil Revision Petition lacks merit and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2024

NCC : Yes / No
sji

To

The District Munsif cum Judicial Magistrate Court,
Kadaladi in Ramanathapuram District.



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D.BHARATHA CHAKRAVARTHY, J.

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