



C.R.P(MD)No.1749 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1749 of 2019

and

C.M.P(MD)No.8957 of 2019

1.Arunachalam

2.Shanmuganathan

3.Karuppaiyah

4.Pethaperumal

5.Nagaraj

... Petitioner /Respondents 1-5/
Defendants 1-5

Vs.

1.K.Subramanian

... Respondent/Petitioner/
Plaintiff

2.Indian Bank,
Represented by its Manager,
Rendampulikadu Village,
Pattukottai Taluk,
Thanjavur District.

3.State of Tamil Nadu,
Represented by the Collector of Thanjavur,
Thanjavur.

... Respondents/Respondents 6&7/
Defendants 6&7



C.R.P(MD)No.1749 of 2019

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order, dated 18.09.2019 passed in I.A.No.410 of 2019 in O.S.No.100 of 2016 on the file of the District Munsif Court, Pattukottai and set aside.

For Petitioners : Mr.D.R.Murugesan
For R1 : Mr.K.Prabhakar
For R2 : No Appearance
For R3 : Mr.C.Satheesh
Government Advocate

ORDER

The present revision petition has been filed by the defendants 1 to 5 in O.S.No100 of 2016 challenging the order passed by the trial Court, wherein the trial Court has allowed an application filed under Order 6 Rule 17 of the Code of Civil Procedure for amendment of plaint to amend the body of the plaint as well as to incorporate a prayer for mandatory injunction.

2. The 1st respondent herein as plaintiff had filed O.S.No.100 of 2016 for the relief of permanent injunction restraining the defendants 1 to 5 from interfering with plaintiff's possession and administration of the Kattu Pillayar Temple located in Alamathikkadu village, Pattukkottai



C.R.P(MD)No.1749 of 2019

Taluk, Tanjavur District. Pending suit, at the instance of the plaintiff, an Advocate Commissioner was appointed in I.A.No.336 of 2017 to note down the physical features of the property. A second application was filed by the plaintiff in I.A.No.185 of 2018 to note down certain developments that have taken place with regard to the stability of the building. Based upon the Commissioner's report, the present application in I.A.No.410 of 2019 has been filed seeking to amend the plaint and also to incorporate a prayer for mandatory injunction.

3. A perusal of the amendment application reveals that a Hundiyaal which is located outside the temple has been broken open and the amount in the said Hundiyaal has been misappropriated by the defendants. Therefore, certain averments are sought to be incorporated in the plaint and a prayer for mandatory injunction directing the defendants to deposit the said amount. These applications were stoutly opposed by the defendants on the ground that they are no way connected with the main prayer in the suit and the said applications are being filed only to drag on the proceedings. However, the trial Court was pleased to allow those applications. Challenging the same, the present revision petition has been filed by the defendants 1 to 5.



C.R.P(MD)No.1749 of 2019

4. According to the learned counsel appearing for the revision petitioners, the plaintiff is in the habit of continuously filing interim applications to drag on the proceedings. He further contended that though the interim application filed by the plaintiff has already been dismissed, the plaintiff is not interested in pursuing the suit and therefore, they are continuously filing various applications one after the other. Two applications have been filed for appointment of Advocate Commissioner. In fact, in the second Commissioner's report, there is no reference about any misappropriation of the funds from the Hundiyaal. On the other hand, the defendants are in the administration of the suit temple and therefore, the present application has been filed only to drag on the proceedings. He further pointed out that already an order of *status quo* has been granted by this Court on 27.02.2017 in C.R.P(MD)No.35 of 2017 and directions have been issued for early disposal of the suit. However, the plaintiff is not co-operating for the early disposal of the suit. Without co-operating for the disposal, he is harassing the villagers by filing application after application.

5. Per contra, the learned counsel for the respondents had contended that the Hundiyaal is part of the suit schedule property and in



C.R.P(MD)No.1749 of 2019

view of the Commissioner's report, it is clear that the defendants have opened the Hundiya and taken the amount. That apart, the amendment application being a pre-trial amendment, the same has to be allowed. He further pointed out that the Hundiya being subject matter of the suit schedule property, the amendment of the plaint is not based upon any new cause of action or it is not likely to change the cause of action, which is already stated in the plaint. He further agreed for the early disposal of the suit.

6. Considering the submissions made on either side, this Court is of the opinion that the Hundiya being already a subject matter of the suit schedule property and there are allegations on the side of the plaintiff that the Hundiya has been opened and allegedly some amount has been taken from the said Hundiya, the amendment sought for could be allowed. The amendment application has been filed in the pre-trial stage. This does not change the cause of action or it is contrary to the cause of action already prayed for in the suit. However, it could be seen that the report of the Commissioner has been filed on 12.07.2018 and the present application for amendment of the plaint has been filed on 16.09.2019 with a delay of more than one year. Considering the fact that already cost



C.R.P(MD)No.1749 of 2019

has been imposed by the trial Court and the said order has been complied with by the plaintiff, this Court is of the opinion that the revision petition could be dismissed with a direction to the trial Court to dispose off the suit at an earlier point of time.

7. Accordingly, this Civil Revision Petition is dismissed with a direction to the trial Court to dispose off the suit on or before **31.08.2024** and the same may be reported to the Registry. Both the parties are directed to co-operate with the trial for early disposal of the suit. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

08.04.2024

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

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To

1. The District Munsif Court,
Pattukottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.1749 of 2019

R.VIJAYAKUMAR ,J.

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Order made in
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