



C.R.P.(MD) No.2432 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	11.11.2024
Pronounced on	15.11.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.2432 of 2024

and

C.M.P.(MD) No.13658 of 2024

1.R.Raghuraman
S/o.Rajamani Iyer

2.R.Giridaran
S/o.Rajamani Iyer

... Petitioners

Vs.

Ambika @ Ambikavathy
W/o.Mohan @ Mohankumar

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to call for the records relating to the impugned order dated 22.08.2024 made in I.A.No.1 of 2022 in O.S.No.49 of 2017 on the file of the Principal District Munsif Court, Vendasandur, Dindigul District and set aside the same.

For Petitioners : Mr.S.Siva Ilayaraja

For Respondent : Mr.G.Gomathi Sankar



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ORDER

WEB COPY This Civil Revision Petition has been filed by the revision petitioners/plaintiffs to set aside the fair and decreetal order dated 22.08.2024 made in I.A.No.1 of 2022 in O.S.No.49 of 2017 on the file of the Principal District Munsif Court, Vendasandur, Dindigul District.

2. According to the revision petitioners, as plaintiffs, they have filed the suit in O.S.No.49 of 2017 for the relief of a permanent injunction restraining the respondent/defendant and her agents from interfering with the peaceful possession and enjoyment of the suit property.

3. During the pendency of the above suit, the revision petitioners/plaintiffs filed an Interlocutory Application in I.A.No.1 of 2022 under Order VI, Rule 17 of the CPC, seeking to amend the prayer by including a prayer for the declaration of title to the suit property. In the above application, the revision petitioners/plaintiffs have stated that inadvertently, the prayer for declaration of title was omitted to be added in the plaint, and therefore, it is necessary to amend the plaint by including the declaratory relief.



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4. The above application in I.A.No.1 of 2022 was resisted on the side of the respondent/defendant, by stating that the above amendment, if allowed, would change the nature of the suit.

5. The trial court, based on the above pleadings and arguments put forth by either side, dismissed the said application *vide* impugned order dated 22.08.2024, stating that the proposed amendment would change the nature of the suit. Moreover, the trial court, in the impugned order, observed that there is no kind of explanation found in the application to prove the due diligence and that the said application was filed only to prolong the case.

6. Aggrieved by the dismissal of the said application, the present Civil Revision Petition has been filed by the revision petitioners/plaintiffs.

7. Mr.S.Siva Ilayaraja, the learned counsel for the revision petitioners/plaintiffs, would submit that the suit was originally filed with a prayer for a permanent injunction restraining the respondent/defendant from interfering with the peaceful possession and enjoyment of the suit property; that there is a passageway measuring 2 x 47 feet on the eastern



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side of the revision petitioners'/plaintiffs' house, which is a private and exclusive passage belonging to the revision petitioners/plaintiffs, and the respondent/defendant has no right whatsoever over it; that, however, the respondent/defendant, having her house on the eastern side of the suit passage, has often trespassed into the said passage and is causing disturbance; that even in the plaint, it has been specifically mentioned that the passage exclusively belonged to the revision petitioners/plaintiffs and that the respondent/defendant has no right or title over the same; that, however, the erstwhile counsel who filed the suit for the revision petitioners/plaintiffs failed to include the prayer for declaratory relief and, therefore, the revision petitioners/plaintiffs were constrained to file the amendment petition before the trial court; that the trial court, without considering the necessity for filing the said application, erroneously dismissed the same, and hence, prayed for setting aside the order passed by the trial court in I.A.No.1 of 2022.

8. On the other hand, Mr.G.Gomathi Sankar, the learned counsel for the respondent/defendant, would submit that the said amendment petition was filed by the revision petitioners/plaintiffs in order to overcome the admitted facts reflected in the cross-examination of P.W.1; that P.W.1 has



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categorically admitted in his cross-examination that only 1¾ feet of breadth is available on the east-west lane, and now the revision petitioners/plaintiffs are seeking to amend the description of the property to 11 inches of breadth on the east-west and 47 feet of length on the north-south, which is contrary to the admission made by P.W.1; that if the said amendment is allowed, it would change the nature and character of the suit; and that, hence, the trial court, considering the above facts, has dismissed the application filed by the revision petitioners/plaintiffs for amendment, which calls for no interference.

9. Heard on both sides. Records perused.

10. There is no doubt that the parties, who are seeking an amendment to the suit, should have raised the same before the commencement of the trial. In the present case, the suit was originally filed for a bare injunction. By way of amendment, the relief for a declaration of title is sought. According to the revision petitioners/plaintiffs, their erstwhile counsel, who had filed the suit on their behalf, failed to include the prayer for a declaration.



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11. The proviso to Order VI, Rule 17 of the CPC, provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that the party, despite due diligence, could not have raised the matter before the commencement of the trial.

12. In the case on hand, the burden is on the revision petitioners/plaintiffs to show that, in spite of due diligence, such an amendment could not have been raised earlier. But, the revision petitioners/plaintiffs have not pleaded before the trial court in the application for amendment that due diligence was exercised at the time of filing the suit in not seeking the relief prayed for by way of amendment. Only in the supporting affidavit of this Civil Revision Petition, it has been stated that the erstwhile counsel of the revision petitioners/plaintiffs failed to include the declaratory relief. Therefore, the same cannot be accepted as a ground to allow any amendment in the pleading after the commencement of the trial, when, admittedly, the facts were within the knowledge of the revision petitioners/plaintiffs.



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13. Moreover, if the proposed amendment is allowed, it would defeat the categorical admission made by the evidence on the side of the revision petitioners/plaintiffs, which would cause prejudice to the other side. Apart from that, if the said amendment is allowed, it would introduce a totally different and inconsistent case and change the character of the suit. Therefore, I am of the view that the trial court has rightly dismissed the amendment petition filed by the revision petitioners/plaintiffs, and hence, this Civil Revision Petition is liable to be dismissed. Thus, the impugned order dated 22.08.2024 passed by the trial court in I.A.No.1 of 2022 in O.S.No.49 of 2017 is confirmed.

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

15.11.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order
JEN

Copy To:
The Principal District Munsif,
Vedasandur,
Dindigul District.



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K.GOVINDARAJAN THILAKAVADI, J.

JEN

Pre-Delivery Order made
in
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and
C.M.P.(MD) No.13658 of 2024

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