

(2009) 01 MAD CK 0077

In the Madras High Court

Case No : C.R.P. (PD) No. 1434 of 2008 and M.P. No. 1 of 2008

Kumudavalli, Yuvaraj Prasad, Ramadevi and Ammsalakshmi	APPELLANT
Vs	
Sarangapani	RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2009) 01 MAD CK 0077

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : D. Rajagopal, for the Appellant; K.A. Ravindran, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Animadverting upon the order dated 01.02.2008 passed by the learned District Munsif Gudiyatham, in I.A. No. 928 of

2007 in O.S. No. 272 of 1989, this civil revision petition is focussed.

2. Heard both sides.

3. A summation and summarisation of the relevant facts which are absolutely necessary and germane for the disposal of this revision petition would

run thus:

The revision petitioners/plaintiffs filed the suit O.S. No. 272 of 1989 seeking the relief of declaration of title and permanent injunction in respect of

the immovable property described in the plaint schedule; the trial Court commenced trial, whereupon I.A. No. 928 of 2007 was filed seeking

amendment of the plaint so as to incorporate the alternative prayer for possession; but the trial Court dismissed it. Being aggrieved by and

dissatisfied with the order of the lower Court, this revision petition is focussed on

various grounds.

4. The learned Counsel for the revision petitioners/plaintiffs would develop his argument placing reliance on the grounds of revision, to the effect

that the alternative prayer for possession is based on the deposition given by the defendant as though he is in possession.

5. Whereas, the learned Counsel for the respondent/defendant would submit that the plaintiffs approached the Court with a specific plea that they

were in possession and enjoyment of the suit property as on the date of filing of the suit, while so, they cannot simply get the plaint amended so as

to incorporate a prayer for possession.

6. At this juncture my mind is reminiscent and redolent of the decision of the Apex Court reported in 2008(4) TLNJ 588 (Civil) - Vidyabai and

Ors. v. Padmalatha and Anr.]. A bare perusal of the said precedent would leave no doubt in the mind of the Court that after commencement of the

trial, as a matter of course the plaintiff cannot seek for amendment of the plaint. The proviso to Order 6 Rule 17 of C.P.C. would contemplate that

in exceptional cases where there are sound reasons, amendment of the plaint could be ordered. In this case, a perusal of the lower Court's order

would indicate and exemplify that after commencement of the trial, the alternative relief of possession was sought to be incorporated in the plaint,

but the trial Court dismissed the same.

7. In this case the plaintiffs approached the Court with a specific plea that they were in possession and enjoyment of the suit property even as on

the date of filing of the suit, in such a case, the plaint cannot be amended depending upon the plea taken by the defendant. The plaintiffs cannot

pick holes in the case of the defendant, however, it is for the plaintiffs to prove their case during trial. In this case nowhere it is found averred in the

affidavit filed in support of the I.A. that during the pendency of the suit, the defendant trespassed into the suit property and illegally occupied the

same. If that be so, then the Court could readily take note of such subsequent event and allow the amendment, but that is not the case at all here.

Simply because the defendant has deposed before the Court that he has been in possession of the suit property, the plaintiffs would not be justified

in filing the I.A. for amendment and such a course is not contemplated under law. Hence no interference with the order of the lower Court is

required.

8. The learned Counsel for the respondent/defendant would make an extempore submission to the effect that since the suit happened to be of the

year 1989, a time frame may be fixed for earlier disposal. I find considerable force in the submission of the learned Counsel for the respondent.

Accordingly, the trial Court is directed to dispose of the suit O.S. No. 272 of 1989 within a period of three months from the date of receipt of a

copy of this order.

Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.