

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Tmt. **R.M. Subathra**, B.A.B.L(Hons.), M.L.(IPR),

District Munsif, Ponneri.

Monday, the 11th day of January, 2021

LA.2/2020

in

OS.39/2016

1. Muthammal
2. Shanmugam
3. Seeyalan (died)
4. Deivasigamani
5. Dhanapal Reddy
6. Yamuna
7. Sathish
8. Anu

..Petitioners / Defendants

-Vs-

Sumithra @ Dilliammal

...Respondent/Plaintiff

This petition having been finally heard on 21.12.2020, in the presence of Mr. R. Krishnaswamy, the learned counsel for the petitioners/defendant. Mr. T. Susairaj, the learned counsel for the respondent/plaintiff and upon hearing the arguments of both sides and after perusal of the entire records and having stood over for my consideration till this day, this court delivers the following:

ORDER

This is a petition filed under Order VI Rule 17 of CPC to amend the written statement.


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The averments set out in the petition affidavit filed by the petitioner is as follows:

a) The petitioner is the 4th defendant in the suit filed for the relief of declaration of right and title to the suit property and for other reliefs. The petitioner and the other defendants have entered appearance and also filed written statement in the above case, as the plaintiff also prayed for the relief to declare the said decree and judgment as null and void, an issue could be framed regarding the said relief asked for in the plaint and the same could be given a finding and as such the question of payment of court fee will not arise.

b) For the second relief prayed for in the written statement, with regard to the relief of recovery of possession, it is after delivery was effected through this court the plaintiff subsequently prevented the petitioner from going near the suit property. Hence, that relief was asked for. In the written statement already filed there is no reference either with regard to the fact that the said relief is being claimed as a counter claim and there is also no reference to the court fees payable thereon and the same have got to be amended suitably in the written statement. Hence, the petition.

3. The averments set out in the counter filed by the respondent/plaintiff is as follows:

a) The respondent/ defendant has filed the written statement before this court as early as 18.12.2017. Now the petitioners/defendants has filed a petition by way of counter claim by bringing the amendment in the written statement which is barred by limitation. The petitioner is not entitled to seek for any counter claim. The petitioners as an after thought have chosen to file the petition seeking for amendment and has sought for recovery of possession of the property by valuing the property on kist basis which is not legally sustainable.

b) The petitioner has valued the property for recovery of possession under Sec.25(a)

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where the court fee has to be paid on **the** market value of the property. If the property is valued on the market value, this **court** will have no pecuniary jurisdiction. The petitioners earlier have valued the **property** under Sec.25(b) for declaration of title and injunction based on the kist value. Now as per the amendment Act 6 of 2017, the petitioner has to value the property on **the** market value and if the value of the land measuring 1 Acre 36 cents is valued presently on the market value, it would be beyond the jurisdiction of this court. The petitioners were fully aware that they are not entitled to the property and they were not in possession of the property. The petitioners are not entitled to amend the memo of valuation under Sec.25(a) under the un amended provisions of the TNCF Act. Hence, the petition is to be dismissed.

4. Now the point for consideration is whether the petitioners are entitled to get the relief as prayed for?

5. On both sides no oral and documentary evidence was let in.

6. Heard both sides. Perused the records. This is a petition filed under Order VI Rule 17 of the code to amend the written statement to add memo of valuation in the written statement filed as counter claim. The reason stated in the petition is that the reliefs were omitted to be referred as counter claim, only due to inadvertence. It is stated in the counter filed by the respondent that there is bar under limitation Act for such a petition and that the court fee has been paid on the kist value, but should have been paid on the market value of the property. Hence, petition is to be dismissed.

7. On perusal of the written statement which is now sought to be amended, it is seen that reliefs were already sought for but court fee had not been paid and memo of calculation had not been inserted in written statement. In the present petition, the petitioner/defendant wants to amend the statement to that extent. There is no introduction of any new facts in the petition. The question of limitation is a mixed

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question of law and facts and can be decided at the time of trial and any deficit court fee also can be decided at the time of trial. It is also seen that the amendment petition is a post trial amendment. The suit is now posted for cross of PW1. The present petition seeks to insert only a memo of calculation. No prejudice would be caused to the respondent if petition is allowed and on the other hand, the petitioner/defendant having prayed for relief has to necessarily pay the court fee for the same. It is seen that the written statement was filed in the year 2016 and the present petition has been filed after 4 years that too after the commencement of trial. No reason has been stated for the delay. Hence, the court is inclined to allow the petition on payment of costs.

In the result, this petition is allowed on condition of payment of Rs.500/- to the District Legal Service Authority on or before 22.01.2021-failing which this petition shall stand dismissed automatically call on 25.01.2021.

Orders directly dictated to Steno-Typist, typed by him, corrected and pronounced by me in the Open Court on this, the 11th day of January 2021.


District Munsif,
Ponneri.

List of witnesses on the side of the petitioners

NIL

List of documents on the side of the Petitioners

NIL

List of witnesses on the side of the respondent

NIL

List of documents on the side of the respondent

NIL


ADM,
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11/01/2021

✓
Fair/ Draft Order
I.A.No.2/2020
O.S.No.39/2016
Date:11.01.2021
DMC,PNI.

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