



C.R.P(MD)No.911 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.911 of 2023

and

C.M.P(MD)No.4189 of 2023

Gopal

... Petitioner/Petitioner/
Plaintiff

Vs.

Thangapandian

... Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 31.01.2023 in I.A.No.4 of 2022 in O.S.No.17 of 2017 on the file of the Additional District Munsif, Aruppukkottai.

For Petitioner : Mr.V.Sasikumar

ORDER

The present civil revision petition has been filed against the fair and decreetal order, dated 31.01.2023 in I.A.No.4 of 2022 in O.S.No.17 of 2017 on the file of the Additional District Munsif, Aruppukkottai.



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2. The petitioner is the plaintiff before the Additional District Munsif, Aruppukottai in O.S.No.17 of 2017. The said suit has been filed by the petitioner for the following relief:

"11. ஆகவே கனம் கோர்ட்டார் அவர்கள் கிருபை செய்து,

அ) பிராது வரைபடத்தில் கண்ட தாவா 'ABCD' சொத்து வாதிக்கு பாத்தியப்பட்டது என விளம்புகை செய்தும் அதன் தொடர்ச்சியாக தாவா 'ABCD' சொத்தில் பிரதிவாதி ஆக்கிரமித்துள்ள கட்டிட அமைப்புகளை நீதிமன்றம் குறிப்பிடும் காலத்திற்குள் பிரதிவாதி அகற்றுமாறும் அகற்ற தவறும் பட்சத்தில் வாதியே மேற்படி ஆக்கிரமிப்பை அவர் செலவில் அகற்றி கொண்டு அதற்கு ஆகும் செலவினை பிரதிவாதியிடம் வசூல் செய்து கொள்ள தோதாக மேற்படி பிரதிவாதிக்கு எதிராக ஒரு செயலுறுத்துக் கட்டளை பரிகாரம் பிறப்பிக்கும்படியும்.

ஆ) தபசில் சொத்தில் வாதியின் அனுபவத்தை பிரதிவாதியோ அவரது வகையாட்களோ எவ்விதத்திலும் எக்காலத்திலும் இடைஞ்சல் செய்ய கூடாது என மேற்படி பிரதிவாதிக்கு எதிராக ஒரு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பிறப்பிக்கும்படிக்கும்,

இ) இந்த வழக்கின் செலவுத் தொகையை வாதிக்கு பிரதிவாதி கொடுக்கும்படிக்கும்,

ஈ) சமூகம் நீதிமன்றம் சரியென கருகும் வாதிக்கு ஆதரவாக இதர பரிகாரங்கள் வழங்கியும்

தீர்ப்பும், தீர்ப்பாணையும் பிறப்பிக்குமாறு வணக்கமாய் பிரார்த்திக்கப்படுகிறது."

3. The petitioner had filed an application in I.A.No.202 of 2017 for appointment of Advocate Commissioner. Pursuant to which, the Advocate Commissioner was appointed who also gave a report on 26.02.2018. On the strength of the report given by the Advocate



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Commissioner, the petitioner wanted to amend the plaint and therefore, filed an application under Order 6 Rule 17 of C.P.C in I.A.No.4 of 2022.

The application has been rejected by the Court with the following observations:

"13. The petitioner has filed this petition to amend the plaint prayer as to recover of possession. No specific reason has been assigned as to why the present prayer is sought for at this stage and the Court fee paid also is not stated properly. This Court on perusal of records has found that already a petition in I.A.No.1/2019, filed for amendment was disposed of on 23.01.2019, in which an amendment was sought for to amend the provision under which Court fee is paid as to Section 25 (a) of the Tamil Nadu Court Fee Suits and Valuation Act, instead of Section 25 (b) of the Tamil Nadu Court Fee Suits and Valuation Act. The petitioner has amended the Court fee column, but has failed to amend the prayer column.

14. Though the petitioner very well knows about the said petition as early as on 2019, he has not come forward to amend the plaint prayer as per the Section 25 (a) of the Tamil Nadu Court Fee Suits and Valuation Act. Further, the earlier petition filed for amendment is suppressed and the reason as to why the present amendment in the prayer is sought for is also not specifically stated. Hence, this Court finds that the petitioner has not approached this Court with clean hands, since the earlier petition filed for amendment is not stated by him. The reason stated as to now only he came to know about the fact as to amendment has to be carried out is not acceptable, since the petition is filed with delay, which is nothing but to drag on the proceedings. Hence, in the interest of justice, this petition is liable to be dismissed."



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4. The only reason given in the impugned order is that the report of the Advocate Commissioner, dated 26.02.2018 and the application has been filed long after the receipt of the Advocate Commissioner's report on 21.09.2022. However, Court record indicates that the trial has not commenced but also indicates that the petitioner has not come forward to pay requisite fee on account of the proposed amendment.

5. In my view, the petitioner would be entitled to amend the plaint by paying proper Court fee.

6. Considering the fact that the suit is of the year 2017 and that the report was given by the Advocate Commissioner on 26.02.2018, however, the petitioner did not take any steps thereafter, during the intervening period, when there was almost a complete lock down for a period of one year and thereafter, the proceedings were conducted in skeletal manner, therefore, the Court is inclined to allow the Present Civil Revision Petition at the time of admission subject to the following condition:

1. The petitioner pays Rs.10,000/- towards cost to the respondent



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within 30 days from the date of receipt of copy of this order.

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2. The petitioner shall pay requisite Court fee on account of the increase in the extent of the property on the value within such time.

Subject to the petitioner complying with both the requirement, the application for amending the plaint in I.A.No.4 of 2022 shall stands allowed.

7. The petitioner shall pay the cost to the respondent and also the Court fee and file a requisite memo evidencing the same before the Additional District Munsif Court, within a period of a week specified in this order. On such compliance, Additional District Munsif Court shall allow the petitioner to make out corrections in the plaint and file a clean copy of the plaint and also serve copy to the respondent. The respondent shall be given adequate time to file additional written statement.

8. Considering the fact that the suit is of the year 2017, the Additional District Munsif Court, Aruppukkottai, shall endeavour to dispose of the suit as expeditiously as possible after framing additional issues, if any, within a period of 15 months from the date of receipt of



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copy of this order.

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9. The present Civil Revision Petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2023

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

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To

- 1.The Additional District Munsif,
Aruppukkottai.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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