



C.R.P(MD)No.2403 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **02.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2403 of 2018
and
C.M.P(MD)No.10740 of 2018

1.The General Manager,
Bank of India,
Star House, C-T, G Block,
Bandrakurala Complex,
Bandra (East),
Mumbai -400 051.

2.The Branch Manager,
Bank of India,
19/3, Chairmand Shanmugam Road,
Sivakasi.

...Petitioners/Respondents/
Respondents/Defendants

Vs.

R.Ganesan

...Respondent/Petitioner/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the Hon'ble Sub Court, Sivakasi in I.A.No.437 of 2016 in I.A.No.138 of 2014 in O.S.No.15 of 2014 dated 04.08.2017.



WEB COPY



C.R.P(MD)No.2403 of 2018

For Petitioners : M/s.Lakshmi Gopinathan
For M/s.Polax Legal Solutions

For Respondent : Mrs.Radhisathish

ORDER

This civil revision petition has been filed against the order passed by the Sub Court, Sivakasi in I.A.No.437 of 2016 in I.A.No.138 of 2014 in O.S.No.15 of 2014 dated 04.08.2017.

2. For the sake of convenience, the parties will be referred as per the litigative status before the Trial Court. The petitioners herein are the defendants before the Trial Court. The plaintiff is the respondent herein.

3. The brief facts which give rise to the filing of the instant civil revision petition is that the plaintiff has filed a suit for damages and for mandatory injunction in respect of the following schedule of property:

"Non Residential building bearing Door No.44; old No. 19/3, situated in Chairman Shanmugam Road, Sivakasi Town, measuring 2115 sq.ft out of 5375.625 sq.ft in total."

4. During the pendency of the suit, the plaintiff has filed an application for appointment of commissioner in respect of the suit



schedule property. However, after sometime, according to the plaintiff, based upon the defense putforth by the defendants, it necessitated them to struck off the petition mentioned property, which has been mentioned in the commission application, as found in the plaint and wanted to amend the petition as follows:

"விருதுநகர் ரிடி, சிவகாசி சப்டி, சிவகாசி கிராமம் பழைய சர்வே நம்பர் 217, 290, 291/2, 292/2 க்கு டவுண் சர்வேப்படி சிவகாசி டவுண் வார்டு எப் பிளாக் 1 டி.எஸ்.எண். 78ல் எங்கள் பாகம் 10156 சதுரஅடியில், மேல்பக்கம்,

ஏ.எஸ்.கிரிதரன் பாக சொத்துக்கும் கிழக்கு,
கிழமேல் ரோட்டுக்கும் தெற்கு,
ஏ.எஸ்.சின்னா நாடார் வீட்டுக்கும் வடக்கு,
கல்பணா அவர்களுக்கு நாங்கள் விற்க சொத்துக்கும்,
பொதுச் சுவருக்கும் மேற்கு,

இதற்குள் கிழமேல் வடதலை 58 1/4
கிழமேல் தென்தலை 59 1/4
தென்வடல் மேல்தலைஅடி 97 1/4
தென்வடல் கீழ்தலைஅடி 85 3/4

5375.625 சதுரஅடி நிலமும் அதில் கட்டியிருக்கிற ஆர்சிசி கட்டிடமும், ஏசி ஷீட் கட்டிடமும், மின் இணைப்பு எண். F 2343, போரிங் மோட்டார் வகையறாவும், பழைய டோர் நம்பர் 19/3க்கு புது டோர் 44க்கு சம்பந்தப்பட்டது. சேர்மன் ஏ.சண்முகம் ரோட்டைச் சேர்ந்தது. சிவகாசி முனிசிபல் லிமிட்டுக்குள்பட்டது is to be added."

5. The said application was resisted by the defendants on the ground of non-joinder of necessary party, namely, wife of the plaintiff was not made as a party and there was a collusion between the plaintiff and his wife. It is the further submission of the defendants that the wife of the plaintiff alone is the landlord.



WEB COPY

6. However, the learned Trial Judge after considering the either side, keeping in mind with the ground raised by the plaintiff in the commission application, thought fit to allow the amendment application.

7. I have given my anxious consideration to either side submissions.

8. Even before embarking into the disputed facts, when the Court perused the amendment, which sought for by the plaintiff, he wants to struck off the suit schedule property from the Commission application, and wants to introduce the different schedule property by way of an amendment. Though, the learned counsel for the plaintiff submits that the amendment which sought for in the Commission application is the property which includes the suit schedule property, unless the schedule of property in the suit is amended, the question of introducing a different property in the commission application will not arise.

9. Therefore, this Court has found justification to interfere with the order of the Court below. Further, this Court finds manifest error in the order of the Court below, which error has to be rectified by allowing this



C.R.P(MD)No.2403 of 2018

civil revision petition. However, the respondent/plaintiff is given liberty to file a fresh amendment application according to law.

10. In the result, this Civil Revision Petition stands **allowed** with the liberty as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2023

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

To

- 1.The Sub Court,
Sivakasi
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.2403 of 2018

C.KUMARAPPAN,J.

SN

C.R.P(MD)No.2403 of 2018

02.08.2023