

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4559 of 2015

and

M.P. No.1 of 2015

P.Singaravelu Kounder

Vs.

.. Petitioner/Defendant

1.Jayabal

2.Jegannathan

.. Respondents/Plaintiffs

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 06.08.2015 in I.A.No.470 of 2015 in O.S.No.185 of 2014 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner

:Mr.P.Mathivanan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 06.08.2015 in I.A.No.470 of 2015 in O.S.No.185 of 2014 on the file of the Principal District Munsif Court, Cuddalore.

2.The respondents herein as the plaintiffs filed a suit in O.S.No.185 of 2014 for declaration of title and recovery of possession and also mesne profits. In the description of property, it was mentioned that the property is situated in Cuddalore District, Kalinjikuppam Madura, Nallappa Reddipalayam village, new S.No.56/1 – 0.21 – 1/2 cents and old S.No.202. When P.W.1 was in witness box and cross-examination was partly done, at that time, the respondents/plaintiffs have filed an application in I.A.No.470 of 2011 for amending the total extent and also boundaries in the suit properties. The trial Court, after hearing both sides, allowed the application, against which, the present revision petition has been preferred by the defendant.

3.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length.

4.Learned counsel for the revision petitioner/defendant submits that after amendment in the Civil Procedure Code, once trial has been commenced, amendment shall not be allowed unless he proved that as to why he did not file the amendment application before the commencement of trial and also with due diligence, he is

unable to collect the material for amendment. In the case on hand, while filing the suit, the respondents/plaintiffs have given total extent and survey numbers in the description of the suit property. Now the plaintiffs sought for amending the total extent and four boundaries in the suit properties, which will change the nature of the suit. They filed the amendment application only to fill up lacuna that too after cross-examination has been done. Therefore, he prayed for allowing the revision.

5. On perusal of the typed set of papers, it reveals that the suit has been filed for declaration of title and recovery of possession on the basis of the sale deed dated 31.01.1991. The first plaintiff is the father and second plaintiff is his son. As per the plaint, the second plaintiff purchased the property from one Dhanusu on 31.01.1991. There was a litigation between the plaintiffs and one Veerappan in respect of the suit property. Further, the defendant/revision petitioner herein has filed a suit in O.S.No.281 of 2007 against the plaintiffs for permanent injunction. He is claiming title that he has purchased the suit property from Veerappan and others on 12.03.1997, when the second appeal in S.A.No.724 of 1997 preferred by the plaintiffs was pending. That suit was dismissed by

holding that the sale deed came into existence when the second appeal is pending and the same is hit by lispendens. Against the same, the revision petitioner/defendant has preferred an appeal in A.S.No.50 of 2008 and the same was decreed, against which, the respondents/plaintiffs preferred a second appeal in S.A.No.704 of 2009 and the same was dismissed by confirming the decree and judgment made in A.S.No.50 of 2008. Therefore, the respondents/plaintiffs were constrained to file the present suit for declaration of title and recovery of possession.

6.The revision petitioner/defendant has filed a written statement stating that he is the bona fide purchaser for value and prescribed title by adverse possession. After framing issues and P.W.1's cross-examination was partly done, the respondents/plaintiffs have come forward with the present application for amendment under Order VI Rule 17 C.P.C.

7.As per the Order VII Rule 3 C.P.C., where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of

settlement or survey, the plaint shall specify such boundaries or numbers.

8. Admittedly, in the description of the suit property, it was mentioned that the property is situated in Cuddalore District, Kalinjikuppam Madura, Nallappa Reddipalayam village, new S.No.56/1 - 0.21 - 1/2 cents and old S.No.202. Now in the amendment application, the respondents/plaintiffs sought for inserting the word "0.15.5 Ares" in between 56/1 and 0.21 - 1/2 cents and also the boundaries.

9. It is well settled dictum of the Hon'ble Apex Court that laws are man made laws and for sheer technicalities, the Court shall not shut down the remedy to the parties and for dispensing the substantial justice, amendment has to be allowed even after commencement of trial. In the case on hand, if the suit is decreed, the respondents/plaintiffs are unable to execute the decree, since four boundaries are not mentioned in the plaint. So, I am of the view that to render substantial justice, amendment now sought for is necessary. That factum was rightly considered by the trial Court and allowed the application on payment of costs. Therefore, the

order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed.

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

11.12.2015

kj

Index: Yes/No

To

The Principal District Munsif Court, Cuddalore.

R.MALA,J.

Kj

C.R.P(PD).No.4559 of 2015
and M.P. No.1 of 2015

11.12.2015