

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1099 of 2012

D.Visalakshmi @ Visalakshi Devendran

...Petitioner

vs.

Selvaraj

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order in I.A.No.395 of 2011 in O.S.No.237 of 2008 on the file of the District Munsif Court, Tambaram dated 30.06.2011.

For Petitioner : Mr.V.Lakshminarayanan

For Respondent : Mr.T.Jayalakshmi

for

M/s.Paul & Paul

ORDER

The plaintiff in the original suit O.S.No.237 of 2008 on the file of the District Munsif, Tambaram is the petitioner in the present revision. The said suit was filed against the respondent herein for permanent

injunction restraining the respondent from interfering with the peaceful possession and enjoyment of the suit property. In the plaint, the suit property had been described as follows:

"All that piece and parcel of land comprising in Survey No.263 part, to an extent of 0.01 cent bearing Door No.24, Bajanai Koil Street, Kannadapalayam, West Tambaram, Chennai 45 situated at Tambaram village, Tambaram Taluk, Kancheepuram District, within Boundaries:

North by : House owned by Subramani

South by : Common Passage

East by : House owned by Govindaraj

West by : Remaining property of Devendran"

The respondent filed a written statement and the suit is pending for trial.

2. In an application filed by the petitioner for appointment of a Commissioner, an Advocate Commissioner was appointed and he filed a report and plan. Contending that when the papers were prepared for the trial of the case, it was brought to the notice of the petitioner that there was a technical flaw in the suit as injunction was sought for not only in respect of the exclusive property of the petitioner but also in respect of the common passage leading to the suit property; that in view of the said technical flaw she might loose the fight even in

respect her absolute property and that pursuant to the same, the petitioner was advised to file the application under Order VI Rule 17 CPC for amending the plaint schedule as well as the prayer to confine the prayer for relief of injunction to the property owned absolutely by the petitioner/plaintiff and limit the scope of injunction in respect of the common passage not to prevent her enjoyment as a co-owner.

3. The objection raised by the respondent before the trial Court is that by the proposed amendment, the revision petitioner/plaintiff wanted to change the scope of the suit itself by including a property, which was not the subject matter of the suit. It was also contended by the respondent herein before the trial Court that there was ambiguity in the description of property, which was sought to be shown as "A" schedule insofar as the extent was noted to be about 0.01 cent or 535 sq.ft.

4. The learned trial Judge, sustained the objection raised by the respondent, dismissed the application I.A.No.395 of 2011 and non-suited the petitioner for the relief sought for in the said petition by order dated 30.06.2011, which is challenged in the present revision.

5. The arguments advanced by Mr.V.Lakshminarayanan, learned counsel for the revision petitioner and by Mrs.T.Jayalakshmi, learned counsel for the respondent are heard and the materials available on record in the form of typed-set of papers are also perused.

6. It is the contention of the learned counsel for the petitioner before this Court that even in the original plaint, the absolute property of the petitioner as well as the common passage were shown as an integrated property; that only by a late realization, the petitioner was given to understand that she might fail in view of the technical defect of showing the common passage also as the property in respect of which absolute injunction has been sought for and that the same was the reason why the proposed amendment was sought for.

7. For the objection raised on behalf of the respondent, learned counsel for the petitioner would submit that the petitioner is prepared to give up the words "about" and "or 535 sq.ft" appearing before and after "0.01" cent in the prayer part of the petition and that in view of the same, the respondent shall not have any serious objection for allowing the amendment sought for subject to a rider that the above said terms should be removed.

8. This Court is also of the view that the only valid objection that could have been taken by the respondent is sought to be removed by the said submission made by the learned counsel for the petitioner. In all other respects, the petitioner can be justified in seeking the prayer for amendment of the plaint.

9. For the reasons stated above, this Court comes to the conclusion that the order dated 30.06.2011 passed by the learned trial Judge in I.A.No.395 of 2011 shall be set aside and the said petition shall be allowed in part granting the prayer for amendment as sought for with the rider that in the amendment the terms "about" and "or 535 sq.ft" shall be removed.

10. With the above direction, this Civil Revision Petition is disposed of. No costs.

12.01.2015

Index: Yes/No
Internet: Yes/No
gpa
To

The District Munsif Court
Tambaram

P.R.SHIVAKUMAR.J.,

gpa

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