

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD) No.251 of 2013

and

M.P.No.1 of 2013

Goundappan

... Petitioner/Plaintiff

Vs.

1. Rangasamy Gounder
2. Sundaramoorthy
3. Mani
4. Ponnusamy
5. Ponnammal
6. Shanmugam

...Respondents/Defendants

Prayer: Petition is filed under Article 227 of the Constitution of India, against the Fair and Decretal order dated 07.09.2012 made in I.A.No.362 of 2012 in O.S.No.78 of 2009 on the file of the District Munsif Court, Sathyamangalam.

For Petitioner : Mr.N.Ponraj

For Respondents : Mr.N.Manokaran

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ORDER

This Civil Revision Petition is filed by the petitioner/plaintiff, against the order dated 07.09.2012 passed by the learned District

Munsif, Sathyamangalam, in I.A.No.362 of 2012 in O.S.No.78 of 2009, in and by which, the said I.A. filed under Order 6 Rule 17 of CPC, for amendment of the plaint, was dismissed.

2. Learned counsel for the petitioner/plaintiff contended that the civil revision petitioner/plaintiff has filed the above suit for declaration of title and for permanent injunction in respect of the suit property, except a portion of 10 cents and since the respondents/defendants have filed their written statement and the trial has not yet commenced, the trial Court had dismissed the application filed for amendment of the plaint. The learned counsel further contended that after the survey in the suit property, the petitioner/plaintiff found less extent in the suit property, in view of the unlawful encroachment of the respondents/defendants over an extent of 19 cents and therefore, the above said application was filed to amend the prayer to include delivery of possession. The learned counsel further contended that in order to avoid multiplicity of proceedings and to render substantial justice to the parties to the suit, the above said application for amendment of the plaint was filed. But the trial Court, without applying the principles of law, erroneously passed the impugned order by dismissing the amendment application and therefore, the learned counsel

submitted that the impugned order may be set aside and the Civil Revision Petition may be allowed.

3. Learned counsel for the respondents/defendants contended that the trial Court, after analysing the documents and applying the proper principles of law and with application of mind, rightly dismissed the application. He further contended that there is no infirmity or illegality in the impugned order passed by the trial Court and hence, he prayed that the Civil Revision Petition may be dismissed.

4. This Court heard the submissions made by the learned counsel on either side and perused the materials available on record.

5. Admittedly, the petitioner/plaintiff has filed the above suit for declaration of title and for permanent injunction in respect of the suit property, except a portion of 10 cents and the suit was filed on 25.03.2009. According to the petitioner/plaintiff, 19 cents of land was encroached by the respondents/defendants. It is admitted by both sides that an Advocate Commissioner was appointed in I.A.No.293 of 2010 to fix the boundaries and to measure the suit

property and the Advocate Commissioner has also submitted a report along with plan, after measuring the suit property with the help of Surveyor. It is further contended on the side of the petitioner/plaintiff that after the visit of the Commissioner, the respondents/defendants have unlawfully occupied Southern portion of the suit property by obliterating the bridges measuring an extent of 0.17 cents stealthily and also the house measuring an extent of 0.02 cents in the South-Western corner of the suit property, by driving away the petitioner/plaintiff forcibly. Hence, according to the petitioner/plaintiff, total extent of 19 cents of land was encroached by the respondents/defendants. The questions as to whether the petitioner/plaintiff is entitled to 19 cents of land or not and whether the respondents/defendants have encroached 19 cents of land or not, have to be decided only at the time of trial. It is premature at this stage to decide whether the respondents/defendants encroached 19 cents of land as alleged by the petitioner/plaintiff. In order to avoid multiplicity of proceedings regarding the suit property and to reach finality of the suit, the amendment has to be allowed. The reasons given by the trial Court to dismiss the amendment application, are not at all sustainable.

6. In view of the above facts and circumstances of the case, this Court is of the considered view that the impugned order passed by the learned District Munsif, Sathyamangalam, is not sustainable and the same is liable to be set aside. Therefore, this Court is inclined to allow the Civil Revision Petition.

7. In the result, this Civil Revision Petition is allowed. The impugned order of the trial Court is set aside. The petitioner/plaintiff is directed to carry out the amendment in the plaint within a period of two weeks from the date of receipt of a copy of this order. The trial Court is directed to give sufficient time to the respondents/defendants to file additional written statement, if any. Since the suit is of the year 2009, the Court below is directed to complete the trial within a period of four months from the date of amendment of the plaint by the plaintiff. No costs. Consequently, connected Miscellaneous Petition is closed.

22.12.2015

Index :Yes / No
Internet :Yes / No
Jrl

To

The District Munsif, Sathyamangalam.

G.CHOCKALINGAM, J.

Jrl

Order in

C.R.P.(PD).No.251 of 2013

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