

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.3085 of 2014
and M.P.No.1 of 2014

Mani

.. Petitioner/Plaintiff

Vs.

1.M.Poongavanam
2.P.Marimuthu

.. Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 22.07.2014 made in I.A.No.5272 of 2014 in O.S.No.6520 of 2008 on the file of the Assistant City Civil Court, Chennai.

For Petitioner : Mr.N.Subramani
For Respondents : Mr.V.Balakrishnan

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 22.07.2014 made in I.A.No.5272 of 2014 in O.S.No.6520 of 2008 on the file of the Assistant City Civil Court, Chennai.

2.The revision petitioner herein as a plaintiff filed a suit in O.S.No.6520 of 2008 for the following reliefs:

“(a)directing both the defendants to deliver vacant possession of the property bearing Plot No.37, Door No.146B, first floor, Solaiyamman Koil Street, Thiruvalluvar Nagar, Ayanavaram, Chennai-23;

(b)directing the defendants to pay future damages at the rate of Rs.250/- per day from the date of presentation of the plaint till the date of delivery of possession together with interest at 24% per annum till the date of payment;

(c) directing the defendants to pay the costs of the suit;”

3.The defendants filed a written statement and contesting the same. The revision petitioner/plaintiff filed an application in I.A.No.5272 of 2014 under Order 6 Rule 17 C.P.C., for amending the door No.146B instead of 146A in the short cause title and long cause title, verifications and schedule of property in the plaint in O.S.No.6520 of 2008 for the purpose of determining the real questions. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the plaintiff.

4.Learned counsel for the revision petitioner/plaintiff submits that in the prayer itself, it was stated that door number is 146B. But in the description of the property, the door number is mentioned as 146A. Therefore, the revision petitioner/plaintiff has filed the application to avoid multiplicity of proceedings. He further submits that if the application will be allowed, there is no change in cause of action and nature of the suit has also not been changed. But the trial Court without considering the same, dismissed the application. Therefore, he prayed for allowing the revision.

5.Resisting the same, learned counsel for the respondents/defendants submits that in the allotment order, the door number is mentioned 146A, but in the sale deed, the door number is mentioned as 146B. When the matter was posted for judgment, the present application was filed. So the trial Court has rightly dismissed the application. Hence, he prayed for dismissal of the revision.

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.The revision petitioner herein as a plaintiff filed the suit for recovery of possession in respect of door No.146B and also for claiming damages for use and occupation. But in the description of the property, the door number is mentioned as 146A. It is to be noted that both the door numbers are mentioned in the plaint, which is only a typographical error. Therefore, the correct door number has to be given for proper adjudication. It is pertinent to note that there is no change in cause of action and nature of the suit.

8.It is true, the application was filed after commencement of trial. Therefore, the revision petitioner/plaintiff has to ascertain as to why he has not filed the application before the commencement of trial. Further, the defendants/respondents did not point out the mistake in their written statement. But in the affidavit, the revision petitioner/plaintiff stated that he came to know the mistake only after completion of argument. Under such circumstances, an opportunity must be given to the revision petitioner/plaintiff to do substantial justice. But there is a lapse on the part of the revision petitioner/plaintiff and that should be compensated by payment of

costs to the respondents/defendants. Furthermore, if the application will be allowed on payment of costs, no harm will be caused to the respondents/defendants. Therefore, the order passed by the trial Court is unsustainable and it is liable to be set aside on payment of costs.

8.In fine, the Civil Revision Petition stands allowed on payment of costs of Rs.2,500/- (Rupees Two thousand five hundred only) to the respondents/defendants, on or before 11.01.2016, failing which, the Civil Revision Petition shall stand dismissed. Call the matter on **12.01.2016** for reporting compliance.

22.12.2015

kj

Index:Yes/No
To

The Assistant City Civil Court, Chennai.

R.MALA,J.

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