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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16 - 02 - 2015

C O R A M

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THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

CRP (PD) (MD) No. 1089 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

Abdul Khadar

.. Petitioner/Plaintiff

Vs.

1. A.C. Jamaliah
2. Sirajuddin (Died)
3. Packir Rawther
4. Rehaan Beevi .. Respondents/Defendants
(R4 brought on record as LR of the deceased
second respondent vide order dated
12.12.2014 made in MP.(MD)NO.4/14 in CRP
(MD)No.1089/2014)

PRAYER: Petition filed under Article 227 of the Constitution of India against the order passed in I.A. No. 10 of 2014 in O.S. No. 19 of 2011 dated 09.04.2014 on the file of the District Munsif-cum-Judicial Magistrate, Rameshwaram.

For Petitioner : Mr. A. Arumugam

For Respondents : Mr. Veerakathiravan

ORDER

The plaintiff who filed the suit O.S. No. 19 of 2011 for the relief of declaration and consequential injunction, has projected the present Civil Revision Petition challenging the order dated 09.4.2014 passed by the learned District Munsif - cum - Judicial Magistrate, Rameshwaram, in I.A. No. 10 of 2014 in O.S. No. 19 of 2011 refusing to permit the petitioner to amend the plaint under Order VI Rule 17 of the Code of Civil Procedure.

2. According to the plaintiff, the suit property is to an extent of 5.36 Acres which was owned by one Udhuman and Seeni Mohamed. After their demise, Abul Kasim, son of Udhuman, and Kasim Mohamed, son of Seeni Mohammed, were enjoying the property in common. Later on, the above said two partitioned the property among themselves. According to the plaintiff, who is the son of Kasim Mohamed, the suit property fell to the share of Kasim Mohamed and the share situate to west of the property fell to the share of Abul Kasim. The said Abul



Kasim sold the property on 16.01.1960 to Abdul Khadar and Syed Ahamed whose heirs are the defendants. As the defendants tried to encroach upon the property situate west of the suit property, the suit came to be filed.

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3. From the materials available on record, it is seen that when the suit was posted for trial, in the proof affidavit filed by the plaintiff, he has stated that in the description of the property, it was wrongly stated that the defendants' property is situated on the west of the suit property and, therefore, I.A. No. 71 of 2012 was filed for amending the plaint which was allowed on 07.3.2012. Thereafter, P.W.1 was examined and it was posted for the examination of D.W.1. It is during that time, according to the plaintiff, it was found by him that it is a mistake that the defendant's property is on the east of the suit property and, therefore, he wanted to amend the plaint and contended that such amendment would not in any way prejudice the defendant's case.

4. The same was resisted by the respondents / defendants that earlier, the plaintiff had amended the plaint by obtaining an order in I.A. No. 71 of 2012. Based on the suit relief and the said amendment, trial had commenced and the parties were examined. Now after the evidence of P.W.1 was over and when D.W.1 is in the box, again, the plaintiff wants to change the schedule stating that the defendant's property is situate only on the east of the suit property and not on the west. Besides, comparison of the boundary description given in the plaint schedules as well as the amendment petition totally varies and amounts to changing the nature of the suit. Therefore, they prayed for dismissal of the petition for amendment.

5. The trial Court / learned District Munsif - cum - Judicial Magistrate, Rameshwaram, after elaborately discussing the pros and cons, dismissed the petition holding that the plaintiff has not been prudent in prosecuting his case and had been careless in attitude and has been asking for amendment at his will and pleasure. Feeling aggrieved, the plaintiff has come forward with this Civil Revision Petition.

6. Heard the learned counsel appearing for the parties and perused the records.

7. The only question that needs consideration before this Court is whether the impugned order can be sustained.

8. Before considering the factual details and the materials placed by the plaintiff praying for amendment of plaint, it is useful to refer Order VI Rule 17 which is as under:-

*"17. **Amendment** of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*



13. No doubt, Order VI Rule 17 CPC terms amendment at any stage of the proceedings. However, proviso is clear that no amendment shall be allowed after the trial has commenced unless the Courts comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. In this case, there is no reason adduced by the plaintiff to satisfy the Court that inspite of due diligence, the amendment sought for could not be raised before the commencement of trial. In fact, the plaintiff has asked for an amendment on the first occasion, which was allowed by the trial Court. Thereafter, when the trial is in progress, the second application has been filed. Normally, any amendment can be allowed if a real question of controversy between the parties can be decided. In the instant case, the plaintiff is not sure of even the identity of the property and he cannot be allowed to make amendment after amendment to suit his convenience especially, this is a post-trial amendment. The defendants also cannot be said to be not prejudiced by the amendment. As pointed out earlier, the amendment sought for changes nature of the property given in the plaint earlier. The Court also cannot convince itself that the plaintiff has given just and sufficient reason for allowing the amendment. It is not any subsequent event or any fact that was not within the knowledge of the plaintiff at the time of filing of the suit. It is the plaintiff's right to declare title to the suit property and once a mistake occurs, he could be permitted to amend. But there cannot be repetition of mistakes and rectification of the same by way of amendment after the trial has commenced.

In result, the impugned order rejecting the application for amendment by the learned District Munsif - cum - Judicial Magistrate, Rameshwaram, is not found to suffer from any error or legal infirmity. The revision petition is accordingly dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Crl.Side)

/TRUE COPY/

Sub Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate, Rameshwaram.

Copy to: The Section Officer, VR Section,

Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.Ajmal Associates, Advocate, SR.No.7211

+1cc to Mr.Veera Kathiravan, Advocate, SR.No.6972

order in C.R.P. (PD) (MD) No. 1089 of 2014

Delivered on 16 - 02 - 2015

gri/mvs

PA/23.02.15/4P/5C

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