

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.12.2016

Coram

The Honourable MRS.JUSTICE **PUSHPA SATHYANARAYANA**

C.R.P.PD.No.149 of 2014
and
M.P.No.1 of 2014

A.Rajendran ... Petitioner
vs.

1. M.Kaliyamoorthy

2. Thangapen ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 20.11.2013 made in I.A.No.27 of 2013 in O.S.No.176 of 2008 on the file of the District Munsif Court, Sirkali.

For Petitioner : Ms.V.V.Sathya

For Respondents: Mr.S.Sounthar

ORDER

This Civil Revision Petition is directed against the order dismissing an amendment application filed by the petitioner/plaintiff.

2. The suit is one for declaration declaring that the plaintiff is the owner of the suit property and for an injunction.

3. Now, the amendment is sought for, at the stage when P.W.1 has been examined in cross. In the amendment application, it is stated by the petitioner / plaintiff that on verification of Field Measurement Book [FMB] plan, there was some mistake in the survey number described in the boundaries of the suit property, which is purely a typographical error. Therefore, to avoid unnecessary litigation, the amendment application is filed. The amendment is only with respect to eastern boundary, wherein, it is stated as 3 instead of 19/3 and in the western boundary, it is stated as 2 instead of 19/2. The said amendment will not alter the cause of action or introduce a new case and change the scheme of the suit.

4. However, the learned counsel appearing for the respondent opposed the same, vehemently on the following grounds:

Firstly, it is a post trial amendment and nothing prevented the plaintiff to come up with the amendment application, well ahead of the commencement of the trial.

Secondly, already the plaintiff had filed an application for amendment with respect to the prayer in the plaint.

Thirdly, there is nothing on record to show that the boundary description as sought for in the amendment is correct.

Accordingly, he prayed for the dismissal of the application.

5. The learned District Munsif had dismissed the application only on the ground that there is no document or proof to show that the amendment is correct. However, the said observation is not correct. Merely because the plaintiff seeks amendment during the course of trial, the same cannot be dismissed. When the amendment does not introduce a new cause of action or change or alter the nature of the suit, the same should have been allowed, so that the petitioner/plaintiff can establish his title by filing the relevant documents, if any. The mere amendment of the plaint does not automatically entitle the plaintiff to a decree unless he proves the title to the suit property.

PUSHPA SATHYANARAYANA.J

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6. Hence, in the interest of justice, the following order is passed:

The order passed by the Court below in I.A.No. 27 of 2013 in O.S.No.176 of 2008 dated 20.11.2013 is set aside and this civil revision petition is allowed. The respondents / defendants are given liberty to file their written statement, if any, within two weeks from the date of amendment being carried out by the plaintiff. No costs. Consequently, the connected miscellaneous petition is closed.

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Index :Yes

Internet:Yes

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To

The District Munsif Court, Sirkali.

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