

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.206 of 2014

and

M.P.No.1 of 2014

S.Balaji

... Petitioner

vs

Govindasamy Reddy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of dismissal in I.A.No.408 of 2013 in O.S.No.84 of 2003 dated 28.10.2013 passed by the learned District Munsif Court at Sholinghur.

For Petitioner : Mr.R.Ravi

For Respondent : Mr.N.Damodaran

ORDER

The plaintiff, aggrieved by an order of dismissal passed in an application filed under Order VI Rule 17 C.P.C, has filed this Civil Revision Petition.

2. The suit is one for permanent injunction restraining the defendant from interfering with the plaintiff's enjoyment of 'B' schedule property as the way for 'A' schedule property. While so, after the Commissioner and the land Surveyor measured the property and filed the report, the plaintiff has stated that 'B' schedule property falls in Survey No.1009, whereas in the plaint, it has been stated as Survey No.1010. Hence, the amendment is sought for. The said amendment was dismissed by the learned District Munsif, Sholinghur on the ground that it would change the nature of the suit and the amendment is post trial one.

3. The suit is of the year 2003, which is now kept pending for more than a decade. When the trial has commenced, this amendment application is filed by the plaintiff. The said amendment is also subsequent to the filing of the report of the Commissioner. It is trite law that amendment of pleadings is not permissible, after the commencement of trial. Unless the plaintiff establishes that in spite of due diligence, he could not bring the amendment before the commencement of the trial. The proposed amendment at the stage of trial cannot be allowed.

4. The amendment during the pendency of the trial based on the report of the Commissioner, which has been filed long back only goes to show that the plaintiff is trying to drag on the proceedings in spite of the fact that the suit is of vintage 2003. The amendment sought for is not subsequent to the plaint, but, it is pursuant to the report of the Commissioner and if allowed, it would give rise to a fresh or additional relief. Therefore, it was rightly dismissed by the learned District Munsif, Sholinghur and there is no infirmity or material irregularity in the same.

5. Accordingly, the Civil Revision Petition is dismissed. Considering the age of the suit, the learned District Munsif, Sholinghur is directed to dispose of the same on or before 28.02.2017. No costs. Consequently, connected miscellaneous petition is closed.

srn

15.12.2016

Index :Yes

Internet:Yes

To

The District Munsif, Sholinghur

PUSHPA SATHYANARAYANA.J

srn

C.R.P.PD.No.206 of 2014
and
M.P.No.1 of 2014

15.12.2016

<http://www.judis.nic.in>