

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.5027 of 2014
and M.P.No.1 of 2014

Minor Akshay Kumar
Rep. by his mother and next Friend
Sangeetha @ Jangameshwari .. Petitioner/Plaintiff

Vs.

1.Baskaran
2.Shanmugavel
3.Ramalingam
4.Tamilselvi .. Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.10.2014 in I.A.No.91 of 2014 in O.S.No.168 of 2012 on the file of the II Additional District Court, Erode.

For Petitioner : Mr.R.Nalliyappan
For R1 : Mr.S.Chandrasekaran
For R2, R3, R4 : No appearance

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 31.10.2014 in I.A.No.91 of 2014 in O.S.No.168 of 2012 on the file of the II Additional District Court, Erode.

2.The revision petitioner herein as a plaintiff filed a suit in

O.S.No.168 of 2012 for partition and separate possession of 4/7 shares in Item Nos.1 to 6 and 8 to 11 of the suit properties and half share in Item No.7 of the suit properties. The defendants 2 to 4 filed a written statement and contesting the suit. When the matter was posted for arguments, the plaintiff has filed an application in I.A.No.91 of 2014 to reopen the case for the purpose of amend the plaint. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the plaintiff.

3.Learned counsel for the revision petitioner/plaintiff submits that the suit properties have been mentioned mistakenly. Due to the mistake committed by the previous counsel, the minor plaintiff's right over the suit properties may not be affected. Hence, the plaintiff sought for amending the plaint by including some items in the suit properties. He further submits that during cross-examination only, the plaintiff came to know that some of the properties belonging to their family have been sold by the first defendant/grand father of the minor plaintiff. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revision.

4.Resisting the same, learned counsel for the first respondent

submits that the reason assigned by the plaintiff to amend the plaint was not sufficient and that factum was rightly considered by the trial Court. Therefore, he prayed for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the materials available on record.

6.The minor plaintiff has filed the suit against his grand father, father and subsequent purchasers for partition and separate possession. The defendants 2 to 4 filed the written statement and contesting the suit. After examination of witnesses and when the suit was posted for arguments, the plaintiff has come forward with the application for reopen the case for the purpose of amending the plaint. In the affidavit filed in support of the application, it was stated that suit properties have been mentioned mistakenly and it was done by previous counsel. So the plaintiff wants to amend the plaint and hence, he filed the present application to reopen the case for amending the plaint. According to the first respondent, the reason assigned by the plaintiff for amending the plaint is not sufficient. Further, no amendment is permissible after commencement of trial.

7.On perusal of the typed set of papers, it reveals that the

plaintiff has not mentioned as to whether the plaintiff wants to include new items in the suit properties or to rectify the survey number and boundaries of the suit properties. So it is appropriate to incorporate para-2 of the affidavit filed in support of this application, which runs as follows:

"2. At the time of trial only it was noticed to my knowledge that the suit properties have been mentioned mistakenly and in spite of due diligence I could not have raised the matter before the commencement of trial. Due to my previous counsel's mistake the minor plaintiff right over the suit properties may not be affected."

8.As per Order VI Rule 17 C.P.C., no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. It is clear that the plaintiff must be assigned sufficient cause as to why he has not filed the amendment application prior to commencement of trial. But in the affidavit filed in support of the application, the plaintiff has not assigned sufficient cause as to why the amendment application has not been filed before commencement of trial. In my opinion, it clearly shows that the

plaintiff only with a view to drag on the proceedings, filed this application. The trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision is dismissed as devoid of merits.

9. In fine, the Civil Revision Petition stands dismissed. At request of the learned counsel for respondent, since the suit is of the year 2012 and it has been posted for argument, the trial Court is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

11.01.2016

Index: Yes/No

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R.MALA,J.

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To

The II Additional District Court, Erode.

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