

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4837 of 2015 &
M.P.No.1 of 2015

Ramalinga Nainar

... Petitioner

v.

Abdul Wahab

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 12.12.2014 passed I.A.No.158 of 2011 in A.S.No.55 of 2010 on the file of Principal Subordinate Judge, Villupuram.

For Petitioner : Mr.R.Gururaj

For Respondent : Mr.Mohammed Fayaz Ali_

O R D E R

Challenging the fair and final order passed in I.A.No.158 of 2011 in A.S.No.55 of 2010 on the file of Principal Subordinate Court, Villupuram, the plaintiff in O.S.No.336 of 2007 on the file of Principal District Court, Ulundurpet has filed the above Civil Revision Petition.

2. The revision petitioner filed the suit in O.S.No.336 of 2007 for declaration and permanent injunction.

3. The Trial Court dismissed the suit on 23.2.2010.

4. Aggrieved over the same, the revision petitioner-plaintiff filed an appeal in A.S.No.55 of 2010 on the file of Principal Sub Court, Villupuram. In the said appeal, the revision petitioner filed an application in I.A.No.158 of 2011 under Order 6, Rule 17 of CPC to amend the survey number mentioned in the suit schedule as 63/4 and 63/5 instead of Survey No.63/1.

5. In the affidavit filed in support of the application, the revision petitioner has stated that he was 85 years old and that due to his old age, he has not noticed the wrong mentioning of the Survey No.63/1 instead of Survey Nos.63/4 and 63/5.

6. The application filed by the revision petitioner was contested by the respondent.

7. The Lower Appellate Court, taking into consideration the case of both the parties, dismissed the application finding that the application filed by the revision petitioner was at a belated stage and therefore, it cannot be entertained.

8. Admittedly, the parties entered the witness box based on the available pleadings and let in oral evidence in respect of Survey No.63/1. The parties had not let in oral and documentary evidences in respect of Survey Nos.63/4 and 63/5. In these circumstances, if the survey number is changed as 63/4 and 63/5, it would cause prejudice to the respondent. The Lower Appellate Court has rightly dismissed the Original Suit finding that the application has been filed at a belated state, that too, after the dismissal of the Original Suit.

9. In these circumstances, I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Mr.R.Gururaj, learned counsel for the revision petitioner submitted that liberty may be given to the revision petitioner to withdraw the suit with liberty to file fresh suit on the

same cause of action. Since the petitioner has not filed any application before the Lower Appellate Court, I give liberty to the revision petitioner to file an application under Order 23, Rule 1 of CPC for the withdrawal of the suit with liberty to file a fresh suit. On filing of such an application by the revision petitioner, the Principal Sub Court, Villupuram shall decide the same, on merits and in accordance with law.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

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Rj

To

The Principal Subordinate Judge,
Villupuram.

M. DURAISWAMY,J.,

Rj

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