

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.11.2016

Delivered on: 17.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD)No.1385 of 2012 &
M.P.No.1 of 2012

Ganapathy

.... Petitioner

vs

1. R.Venugopal
2. Manavalan
3. The Commissioner,
Kanchipuram Municipality,
Nellukara Street, Kanchipuram
5. Murugesan

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the learned Additional District Munsif passed on 29.02.2012 in I.A.No.862 of 2011 in O.S.No.244 of 2008.

For petitioner : Mr.M.Sriram

For respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the order of the learned Additional District Munsif passed on 29.02.2012 in I.A.No.862 of 2011 in O.S.No.244 of 2008, dismissing the application

filed under Order 6 Rule 17 CPC filed by the petitioner herein, seeking to amend the survey number in the plaint schedule and also in the plaint plan.

2. Heard the learned counsel appearing for the petitioner and perused the entire material available on record.

3. The petitioner is the plaintiff in the suit in O.S.No.244 of 2008 filed before the trial Court, for grant of permanent injunction, to restrain respondents herein, who are the defendants in the suit, from interfering with his peaceful possession and enjoyment of the suit property which is marked as ABCD in the plaint plan. Pending the suit, the subject interlocutory application in I.A.No.862 of 2011 was filed under Order 6 Rule 17 r/w 151 CPC, seeking to amend the survey number of the plaint schedule and plaint plan in view of the reason that there was a typographical error crept in the description of the survey number and the petitioner/plaintiff came to know the same at the time of tendering evidence in the suit proceedings. The petitioner also contended that by amendment, no new case would be introduced nor the character of the suit would be changed and in the absence of amendment, the prayer in the suit would become non-forcible even if the same is allowed.

4. Resisting the application, the respondents/defendants filed their counter statement, stating that the petitioner/plaintiff was not diligent enough to prosecute the case and the aim of filing of the I.A., was to drag on the proceedings and harass the respondents. Moreover, the respondents contended that at the stage of trial, no amendment was permissible.

5. After hearing the submissions of the parties, the learned trial Court passed an order dated 29.2.2012, dismissing the I.A. filed by the petitioner/plaintiff. The learned trial Court has reasoned that the petitioner/plaintiff being aware of the different survey number even earlier to the commencement of the trial, filing of the I.A., after commencement of trial, did not indicate exercise of due diligence by the petitioner and therefore, the learned Judge found the contention of the respondents that no due diligence was shown by the petitioner/plaintiff in filing the I.A. more acceptable. In such view of the matter, the learned Judge dismissed the I.A. on the ground that in view of the strict condition imposed by the *proviso* to Order 6 Rule 17 CPC, the I.A. cannot be allowed and hence the same was dismissed.

6. As against the above order, the present Civil Revision Petition has been filed. After hearing the learned counsel for the petitioner

and after perusing the pleadings and material, this Court is of the view that mere change in survey number as described in the plaint and in the plaint plan, does not change the character or structure of the suit. The petitioner/plaintiff contended that it was by mistake, incorrect survey number has been mentioned and on realization of the same subsequently, the same was sought to be corrected by way of amendment. A mere oversight by the petitioner/plaintiff cannot be a ground on which, the crucial amendment should be rejected since the petitioner may completely lis out as against the respondents/defendants in the suit relief. Though *proviso* to Order 6 Rule 17 CPC ought to be followed in the matter of amending the prayer post trial, but eventually, it has to be seen whether the application of the same would sub serve justice for the parties. As between the procedural mandate and substantial justice, substantial justice is always required to be preferred. In the present case, if the amendment as sought for by the petitioner/plaintiff is not permitted, the very purpose of filing the suit itself would be defeated. In the circumstances, the order, dated 29.2.2012 passed by the learned Additional District Munsif in I.A.No.862 of 2011 in O.S.No.244 of 2008 is set aside.

7. Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected MP is closed. Since

the suit is of the year, 2008, the learned trial Court is directed to proceed with the trial after allowing the amendment as sought for by the petitioner/plaintiff in the I.A.No.862 of 2011 and complete the trial within a period of six months from the date of receipt of a copy of this order.

Internet: yes/no
Index: Yes/no
suk

17-11-2016

V.PARTHIBAN, J.

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Pre delivery Order in
CRP PD No.1385 of 2012

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