

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.470 of 2016

and

C.M.P.No.2391 of 2016

Pavadai

... Petitioner

vs.

1. Kumar

2. Vellaiyan

3. Kolanji

4. Ramesh

S/o.Duraikannu

5. Ramesh

S/o.Vellikannu

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal dated 18.12.2015 made in I.A.No.1721 of 2015 in O.S.No.168 of 2012 on the file of the Principal District Munsif, Ulundupet.

For Petitioner : Mr.C.Munusamy

ORDER

The plaintiff in the original suit O.S.No.168 of 2012, instituted on the file of the Principal District Munsif, Ulundurpet, is the petitioner in the present revision filed under Article 227 of the Constitution of India.

2. The revision stands listed today for admission. The arguments advanced by Mr.C.Munusamy, learned counsel for the petitioner are heard. The impugned order of the trial Court and the copies of the other documents produced in the form of typed set of papers are also perused.

3. The petitioner herein / plaintiff filed the above said suit O.S.No.168 of 2012 on the file of trial Court against the respondents herein for a declaration of his title in respect of the plaint 'B' schedule property and a permanent injunction restraining the respondents / defendants from trespassing into the plaint 'B' schedule property.

4. The suit is resisted by the respondents herein / defendants. After three years from the date of institution of the suit, when the suit was in the part-heard stage and it stood listed for plaintiff's further evidence, the petitioner herein / plaintiff filed I.A.No.1721 of 2015 under Order VI Rule 17 C.P.C to amend the plaint thereby deleting the prayer for declaration in respect of the plaint 'B' schedule property. The learned trial Judge, after hearing, by order dated 18.12.2015 dismissed the said application and the said order of the trial Court is challenged in the present revision.

5. The petitioner herein / plaintiff filed the plaint with averments that he is the owner of the plaint 'A' schedule property and that the suit 'B' schedule property is being used as an access to the plaint 'A' schedule property from the road that runs on the East of the plaint 'B' schedule property. The further pleading made in the plaint is that the defendants, who do not have any right or title in respect of the plaint 'B' schedule property, are trying to trespass into the property and interfere with the petitioner's / plaintiff's enjoyment of the plaint 'B' schedule property proclaiming that they are the village VIPs and the plaint 'B' schedule property belongs to a temple. Without any pleading as to how the petitioner / plaintiff derived title to the plaint 'B' schedule property, the suit came to be filed with the prayer for a declaration of his title in respect of the 'B' schedule property alone and for a consequential injunction.

6. Now, the learned counsel for the petitioner, before this Court, contends that plaint 'B' schedule property is the Government Poromboke land. When this Court asked as to why the Government was not made a party to the suit, learned counsel for the petitioner gave a reply that the suit 'B' schedule property is a public pathway. The same goes against his earlier contention that the suit 'B' schedule

property is a Poromboke land belonging to the Government. With such confusing stands, the petitioner / plaintiff chose to approach the Court with the prayer for declaration of his title in respect of the plaint 'B' schedule property. In fact, the entire averment in the plaint shows that he narrated how he derived title to 'A' schedule property, regarding which no relief of declaration or injunction was claimed.

7. On the other hand, though the right claimed by the petitioner / plaintiff over the 'B' schedule property is akin to an easementary right, he has chosen to claim title to the 'B' schedule property, which will disqualify him from claiming easementary right over the said property. Sensing trouble, at a belated stage, the petitioner / plaintiff seems to have approached the Court with the petition for amendment by which he has made an attempt to delete the prayer for declaration of his title in respect of the 'B' schedule property. The proposed amendment will change the very character of the right claimed by the petitioner / plaintiff. The petition seeking permission for amendment has also been filed at a belated stage, namely after the trial had started and the recording of evidence was in the midway. If the amended provision of Order VI Rule 17 C.P.C is applied, the case of the petitioner cannot be brought under the

exemptions provided therein to permit him to amend the plaint at such belated stage.

8. The learned trial Judge, on proper appreciation of the fact and law, rightly held that the petition for amendment was bound to be dismissed and accordingly dismissed the petition for amendment. The challenge made to the order of the trial Court cannot succeed and the present revision does not even merit admission.

9. Accordingly, the Civil Revision Petition is dismissed at the threshold. No costs. Consequently, the connected miscellaneous petition is closed.

22.02.2016

Index: Yes/No

Internet: yes/No

srn

To

The Principal District Munsif, Ulundupet

P.R.SHIVAKUMAR.J

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