

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

**C.R.P.PD.No.2804 of 2012
and
M.P.No.1 of 2012**

K.C.Shanmugam

... Petitioner

- Vs -

1.Ambujavalli Ayal
W/O.Periya Kulandai Raja

2.Ambujavalli Ayal
W/o.Ganesh
3.Roja Ayal
4.Hembamujavalli
5.Raja Kumar Palaniappan
6.Vijaya Kumar
7.Jaya Kumar
8.Sathish Kumar
9.Bharanidhara Sivakumar
10.Nanda Kumar
11.K.C.Singaravelu
12.K.C.Kamal @ Velmurugan

... Respondents

(Cause title accepted, vide order of the Court
dated 11.07.2012 made in M.P.No.1 of 2012, in
CRP.SR.No.49817 of 2012)

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.08.2011, and made in I.A.No.49 of 2009 in A.S.No.181 of 2003, on the file of the Additional District Judge, Fast Track Court, Ariyalur.

For Petitioner	: M/s.R.Balasubramanian
For Respondent	: Mr.P.Valliappan
	for R2 to R8 and R10
	No Appearance for R1 and R9

ORDER

This memorandum of revision has been directed against the fair and decreetal order dated 25.08.2011, and made in I.A.No.49 of 2009 in A.S.No.181 of 2003, on the file of the Additional District Judge, Fast Track Court, Ariyalur.

2. The revision petitioner herein is the 1st respondent in Appeal in A.S.No.181 of 2003 and the 1st defendant in the suit in O.S.No.38 of 1997 on the file of the District Munsif Court, Jayankondam.

3. It reveals from the records that the original respondent herein viz., Periya Kulandai Raja had filed a suit in O.S.No.38 of 1997 on the file of the District Munsif Court, Jayankondam, as against the revision petitioner seeking the relief of permanent injunction. The suit was contested by the revision petitioner and ultimately it was dismissed against which an appeal in A.S.NO.181 of 2003 was filed by the respondent on the file of the Additional District Judge, Fast Track Court, Ariyalur.

4. During the pendency of the appeal, the respondent being the plaintiff in the suit had taken out an application in I.A.No.49 of 2009 under order 6 Rule 17 of C.P.C to amend the plaint. When the matter was taken up for hearing before the appellate court, it was vehemently contested by the revision petitioner and ultimately the said petition was allowed. Questioning the correctness of the order dated 25.08.2011, present revision is filed. The revision petitioner is the 1st respondent in the appeal in A.S.No.181 of 2003.

5. Heard, Mr.R.Balasubramanian, learned counsel for the petitioner and Mr.P.Valliappan, learned counsel for the respondents/plaintiffs.

6. It is revealed from the records that the respondent/plaintiff has described the property in the plaint schedule as under.

"In Perambalur District, Udayarpalayam Taluk and Sub Registry, in Udayarpalayam inside the Palace compound-East of Late Chinna Rajadurai, South of Blue and Green Bungalow, West of Pathway and North of East-west Pathway-vacant site as shown as A1, A2, A3, A4 in the plaint plan-Approximately 0.5 cents - Patta No.1042 -S .F.No.254.

7. In this connection, in the affidavit, filed in support of the petition filed by the respondents/legal heirs of the original Plaintiff, it is stated that in the description of the property, instead of 0.26 cents, it is wrongly typed as 0.5 cents, which is purely a clerical error and only on the shortage of the extent of the land, the suit was dismissed by the Court below, for want of identification of the property.

8. Mr.P.Valliappan, learned counsel for the respondents has also submitted that there is no change in the cause of action and there is also no change in respect of boundaries of the property and it is well settled, the boundary will prevail of the property.

9. During the pendency of this Civil Revision Petition, no counter statement was filed with reference to the extent of land sought to be amended in the plaint and therefore, this Court did not see any discrepancy or infirmity in the order passed by the First Appellate Court.

10. In view of the above, the revision petitioner's prayer deserves to be dismissed and the impugned order is liable to be confirmed. Accordingly, the impugned order dated 25.08.2011 passed in I.A.No.49 of 2009 in A.S.No.181 of 2003 is confirmed. The Additional District Judge, Ariyalur, is directed to dispose of the appeal in A.S.No.181 of 2003, within the prescribed period of two months from the date of receipt of a copy of this order.

T.MATHIVANAN, J
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11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.09.2016

Index:Yes / No
Internet:Yes / No
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To

The Additional District Judge,
Fast Track Court, Ariyalur.

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