



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.368 of 2016 (PD)

and

C.M.P.(MD)No.1602 of 2016

Mohamed Rukkaiyabivi

.. Petitioner

Vs.

1.Mahasar Ali

2.Palkisammal

3.Pambaiah @ Syed Ibrahim

.. Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the order in I.A.No.632 of 2015 in O.S.No.69 of 2012 dated 07.12.2015 by the Learned District Munsif Court, Muthukulathur.

For Petitioner : Mr.S.A.Ajmal Khan

ORDER

The petitioner, who is the plaintiff in O.S.No.69 of 2012, filed a suit for declaration and permanent injunction against the respondents, on the file of the District Munsif Court, Muthukulathur. The respondents filed I.A.No.506 of 2014 for rejection of plaint. The petitioner filed I.A.No.632 of 2012 for amendment of plaint to include a prayer to declare the sale deed, dated 30.12.2011 bearing document No.5232 of 2011 in favour of respondents 1 & 2 as null and void. According to the petitioner, he came to know about the same, when his counsel cross-examine the respondents when they gave evidence in I.A.No.506 of 2014 for rejection of plaint filed by the respondent. The respondent filed counter affidavit and resisted the same. The respondent submitted that in the written statement itself they have mentioned about the purchase and particulars of sale transaction. The reason given by the petitioner that he came to know about the sale transaction in favour of respondents only at the time of cross-examination, is not correct. The amendment sought for is introducing the new cause of action and will change the entire nature of the suit and prayed for amendment of the I.A. The learned Judge considering all the materials on record and arguments of the learned counsel for the



parties, dismissed the I.A. Against the said order of dismissal, the petitioner has filed the present Civil Revision Petition.

2. The learned counsel for the petitioner submitted that the Court must consider the application for amendment liberally. The learned Judge erred in not accepting the contention of the petitioner that he came to know about the sale in favour of the respondents only his counsel cross-examined the respondents. The amendment sought for will not change the nature of the suit and will not introduce new cause of action. Unless the amendment is ordered, the petitioner will be put to irreparable loss and lead to multiplicity of proceedings and therefore, prayed for allowing the Civil Revision Petition.

3. Heard Mr.S.A.Ajmalkhan, learned counsel appearing for the petitioner.

4. I have heard the arguments of the counsel for the petitioner and carefully perused the entire materials on record.

5. From the materials it is seen that the petitioner filed a suit for declaration and for permanent injunction. The respondent in the written statement stated that about their purchase by their vendor and subsequently their purchase. Therefore, the submission of the learned counsel for the petitioner that petitioner came to know about the sale in favour of the respondent only when his counsel cross-examine the respondents is untenable and unacceptable. The learned Judge correctly held that without instruction by the petitioner, his counsel could not cross-examine the respondent on this aspect. Further relief sought for is by introducing new cause of action and changes the nature of suit. The learned Judge considered all these aspects and dismissed. There is no illegality or irregularity in the order passed by the learned judge warranting interference by this Court.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(P & A)

/True Copy/

Sub Assistant Registrar

To
The District Munsif, Muthukulathur.

Am

AA/NGM-SS/23.03.2016/2p-2c