



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2016

CORAM:

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THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).No.607 of 2016 and CMP(MD).No.2749 of 2016

Balasingh ... Revision Petitioner/Plaintiff

Vs.

Kingston Sam Sundarraja ... Respondent/Defendant

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.12.2015 made in I.A.No.871 of 2015 in O.S.No.26 of 2014 on the file of District Munsif Court, Srivaikuntam, Tuticorin District.

For Petitioner : Mr. S. Ramesh @ Ramiah

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated, 04.12.2015 made in I.A.No.871 of 2015 in O.S.No.26 of 2014 on the file of learned District Munsif, Srivaikuntam, Tuticorin District.

2. The revision petitioner is the plaintiff in the suit in O.S.No.26 of 2014. The respondent is the defendant.

3. According to the petitioner, he purchased the suit property in Court Auction sale in execution of decree passed in O.S.No.44 of 2003. After purchase, he took possession of suit property through Court. He filed I.A.No.871 of 2015 for amendment of plaint, in respect of Survey number and include the prayer for declaration and mandatory injunction. The respondent filed counter affidavit and submitted that by amendment the petitioner is introducing a new cause of action and seeks new relief. If the amendment is allowed, the entire nature of suit will be changed. The petitioner purchased the suit property in Court auction, as per the decree passed in O.S.No.44 of 2003. The description of the property given in the plaint is as per the description of the property given in the decree passed in O.S.No.44 of 2003. The



learned Judge considering the facts and materials on record dismissed the application filed by the petitioner. Against the said order, the petitioner has filed the present revision.

4. The learned counsel appearing for the petitioner submitted that only Survey Number is to be amended and boundaries are not sought to be changed. He further contended that the learned Judge failed to see that the boundary given in the O.S.No.44 of 2003 and the present suit is one and the same and only the Survey Number wrongly mentioned in the decree in O.S.No.44 of 2013. The inclusion of relief of declaration and mandatory injunction is necessitated due to mistake in survey number. He has also relied on the judgment of the Supreme Court of India made in Appeal (Civil) Nos.5350 to 5351 of 2002 (Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others), dated 22.03.2016.

5. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. From the materials it is seen that the petitioner has come out with a specific case that he purchased the suit property in Court auction sale and took possession through Court and the description of the property given in the schedule to the plaint is as per decree passed in O.S.No.44 of 2003. In the circumstances, the Survey number in the present suit cannot be changed. The inclusion of relief of declaration and mandatory injunction changes the entire nature of the suit. The Judgment relied on by the counsel for the petitioner is not applicable to the facts of the present case.

7. In the circumstances, the learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application. Further the learned Judge has exercised his power conferred on him in proper perspective and there is no irregularity or illegality warranting interference by this Court.

8. In the result, the Civil revision petition is dismissed confirming the impugned order dated 04.12.2015 made in I.A.No.871 of 2015 in O.S.No.26 of 2014 on the file of learned District Munsif, Srivaikuntam, Tuticorin District. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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To

The District Munsif, Srivaikuntam, Tuticorin District.

Trp

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JM/GSV-PM/13.04.2016/3P-2C

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