

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2017

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.(PD) No.1010 of 2014
& M.P.No.1 of 2014

Palaniammal

..Petitioner/Plaintiff

-VS-

1. K.Gopalan
2.R.Krishnaswamy
3.K.Rajkumar
(Respondents 2 & 3 set
exparte before the Court
below hence, given up in this
revision)

.. Respondents/defendants

The Civil Revision has been filed under Article 227 of the Constitution of India to set aside the order fair and decreetal order in I.A.No.1104 of 2013 in O.S.No.120 of 2011 on the file of the Subordinate Court, Tiruchengode, dated 26.02.2014.

For Petitioner : Mr.P.Valliappan

For Respondent-1 : Mr.N.Manokaran

ORDER

Petitioner is the plaintiff. The present Revision Petition has been filed challenging the order passed on 26.02.2014 in I.A.No.1104 of 2013 in O.S.No.120 of 2011, on the file of the Sub-Ordinate Court, Tiruchengode.

2.The Suit has been filed for declaration and consequential injunction. During the pendency of the Suit, the petitioner/plaintiff moved an Application for amending the Plaint. The Trial Court rejected the same on the ground that the amendment sought for by the petitioner/plaintiff is contrary to the descriptions available in Ex.P1, Sale Deed and further averred that the Plaint description of the property is for a larger extent and the amendment sought for is to restrict the claim into half share. In view of such contradictions, the trial Court rejected the petition seeking amendment of plaint.

3.The learned counsel for the Revision Petitioner would contend that the Petitioner/plaintiff has filed the Suit for declaration and injunction and the amendment sought for is only to restrict the claim made out under the original sale deed and the same will not alter the nature of the suit. Further, the trial of the suit has not yet been commenced and the pre-trial amendments are quite likely to be made and the Courts cannot restrict the

pre-trial amendments in view of the clear provision of Order VI Rule 17 of CPC.

4. Per contra, learned counsel for the respondent vehemently opposed the contentions raised by the learned counsel for the petitioner, by stating that the petitioner has not come out with clean hands and the Plaint was filed with ambiguity. The description of the property set out in the Plaint are not in accordance with the documents filed before the Court, more specifically Ex.P1, Sale Deed. Since the description of the property is not in accordance the Sale Deed filed in Ex.P1 and the amendment sought for is not in accordance with law, the same cannot be allowed. The learned counsel for the respondent further contended that the trial Court has rightly considered those aspects and rejected the Application seeking amendment of Plaint. By filing the present Revision Petition, the petitioner wanted to improve her case, which cannot be permitted and hence, this Revision Petition deserves no consideration.

5. Heard the learned counsel for the petitioner, learned counsel for the respondent and perused the materials placed before me.

6. Order VI Rule, XVII of the Code of Civil Procedure enumerates that the Court may at any stage of the proceedings, allow either parties to

alter or allow their pleadings in such a manner and all such amendments shall be made, as may be necessary for the purpose of determining the real controversy between the authorities. Therefore, no prejudice would be caused by allowing the Application seeking amendment, before the commencement of the trial.

7. In the case on hand, an Application has been filed for amending the Plaint, before the commencement of the trial. Further, it is the plaintiff who filed the Suit, has got every right to amend the Plaint before the commencement of the trial, since no prejudice would be caused to the other side, because of such amendment. The respective parties will have the opportunities to defend their case effectively. Therefore, the pre-trial amendments sought for by the parties are to be liberally granted by the Courts.

8. It is common that at the time of filing of the Suit, inadvertently certain pleadings might have been omitted or set out the prayer erroneously. Therefore, the amendment of Plaint is an opportunity to correct the Plaint and such a valuable right cannot be denied unless the opposite party to the Suit is prejudiced. Such being the proposition, this Court is inclined to consider the grounds of revision filed by the petitioner/plaintiff.

9. Accordingly, the order passed in I.A.No.1104 of 2013 in O.S.No.120 of 2011 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2017

Index : Yes
smi/rpa

To,

1. The Subordinate Court,
Tiruchengode.

S.M.SUBRAMANIAM, J.

smi

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