

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.4462 of 2011
& M.P.No.1 of 2011

Sironmani

.. Petitioner

Vs.

Helen

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 28.06.2011 made in I.A.No.190 of 2011 in O.S.No.427 of 2008 on the file of the Principal District Munsif, Pondicherry.

For Petitioner : Mr.R.Natarajan

For Respondent : Mr.K.S.Karthik Raja

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 28.06.2011 made in I.A.No.190 of 2011 in O.S.No.427 of 2008 on the file of the Principal District Munsif, Pondicherry.

2. Petitioner is the plaintiff, respondent is the defendant in O.S.No.427 of 2008 on the file of the District Munsif, Pondicherry. The petitioner filed the above suit for permanent injunction, restraining the respondent from peaceful possession and enjoyment of the Suit 'A' Schedule property. The respondent filed written statement on 25.09.2008 and is contesting the suit. Trial had commenced and the petitioner examined herself as PW1 in chief, when the suit was posted for cross examination of PW1. At that stage the petitioner filed I.A.No.190 of 2011 for amendment of the Schedule with regard to the extents of the land in the Schedule.

3. According to the petitioner, by mistake larger extent of land was mentioned and she came to know about the mistakes committed, only when she was instructing her counsel for

conducting the trial and also submitted that the petitioner is not introducing any new case.

4. The respondent filed counter affidavit and submitted that the respondent filed written statement on 25.09.2008 and in the counter affidavit filed in I.A.No.1042 of 2008 for temporary injunction, she has mentioned that the description of the property is not correct. In spite of the same, the petitioner has not taken any steps for more than two and a half years to amend the plaint Schedule. The petitioner has also not given any reason for the delay in filing the application for amendment.

5. The learned Judge considering the averments in the affidavit, counter affidavit and materials on record, dismissed the application, holding that a specific issue has been framed with regard to the correctness of the description of the property and petitioner has not taken any steps immediately. As per the Order VI Rule 17 C.P.C., amendment can be ordered after commencement of the trial, only when the party proves that in spite of due diligence she could not have filed petition for amendment earlier.

6. Against the order dated 28.06.2011 made in I.A.No.190 of 2011 in O.S.No.427 of 2008, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsels appearing for both sides and perused the two judgments relied on by the learned counsel for the petitioner, who submitted that when the parties are not introducing new case, even after commencing trial, amendment can be allowed.

8. The petitioner has come out with the present application for amendment to the Schedule of the property after commencement of the trial.

9. According to the petitioner, she came to know the wrong description only when she was instructing her counsel for conducting the trial. This contention is without merits. The respondent on 25.09.2008 has pointed out that the description of the property is not correct. The Court also framed a specific issue with regard to the correctness of the description of the suit property.

10. It is rightly pointed out by the learned counsel for the respondent that the petitioner was not diligent enough to file application for amendment. As per the Order VI Rule 17 C.P.C, the party who is seeking amendment after commencement of trial, must prove that in spite of due diligence, she/defendants could not have filed application earlier.

11. In the present case, the petitioner has not pleaded and proved that in spite of the due diligence she could not have filed application earlier. The only reason given by the petitioner is that she came to know about the wrong description of the Schedule of the property only when she was instructing the counsel for conducting the trial. This reason is not acceptable and a valid reason for allowing the application for amendment after commencement of trial.

12. The learned Judge has elaborately considering all the materials on record and scope of the Order VI Rule 17 C.P.C., dismissed the application by giving cogent and valid reason. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 28.06.2011.

13. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsa

To

The Principal District Munsif,
Pondicherry.

+1cc to Mr.R.Natarajan, Advocate, S.R.No.51085

+1cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.51306

C.R.P.No.4462 of 2011
& M.P.No.1 of 2011

SK(CO)
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