

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.PD.No.3450 of 2016

and

C.M.P.No.17596 of 2016

G.Selvaraj

..Petitioner /Respondent

Vs.

R.Prakash

...Respondent/Petitioner

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and deceetal order dated 03.06.2016 passed in I.A.No.2264 of 2015 in O.S.No.840 of 2013 on the file of the I Additional District Munsif, Coimbatore.

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For Petitioner : Mr. R.Kannan

For Respondents : Mr.Srinath Sridevan

ORDER

The present Civil Revision Petition is filed to set aside the

fair and deceetal order dated 03.06.2016 passed in I.A.No.2264 of 2015 in O.S.No.840 of 2013 on the file of the I Additional District Munsif Court, Coimbatore.

2. The respondent/ plaintiff has filed suit is O.S. No. 840 of 2013 before the learned Additional District Munsif, Coimbatore for permanent injunction against the petitioner/ defendant herein. In the aforesaid suit, an Advocate Commissioner was appointed in IA No. 704 of 2013 and he filed a report on 21.06.2013. Thereafter, the trial was commenced and witnesses on both sides were examined and after closing of evidence, the suit was posted for final hearing.

3. At this stage, the respondent /plaintiff had filed IA No. 2264 of 2015 seeking to amend the plaint and to include T.S.No.136/2A along with T.S.No.135. The said application was allowed by an order dated 03.06.2016.

4. Challenging the same, the petitioner/ defendant had filed the revision petition before this Court.

5. The learned counsel for the petitioner submitted that the

respondent herein filed suit by stating that the suit schedule property belongs to him and that the defendant/ petitioner had encroached upon the land in T.S.No.135 and constructed compound wall in the suit schedule property. The trial was commenced and the witnesses were examined and after closing all the evidence at the time of final hearing, the respondent herein filed the application seeking amendment of the plaint to include a new T.S.No.136/2A. According to the petitioner, the said amendment changes the nature and character of the suit and therefore, the said application ought not to have been dismissed by the Court below. If the respondent wants to raise the claim with regard to T.S.No.136/2A he has to file fresh suit and allowing the respondent to amend the plaint after the evidence was let in.

6. The learned counsel for the respondent vehemently argued that there is no change in the character and nature of the suit by virtue of the amendment allowed by the trial court, and the same was noticed only pursuant to the report of the Advocate Commissioner.

7. Heard the learned counsel for the petitioner and the respondent and perused the documents on record.

8. After hearing the learned counsel on either side, it is clear that the entire case of the plaintiff/ respondent revolves around T.S.No. 135 could be seen from the plaint. After the trial commenced and evidence was let in, at this stage the respondent herein came up with a case that the compound wall was constructed in T.S.No.136/2A. It is the claim of the respondent that the suit property in T.S.No.136/2A also belongs to him.

9. It is a settled position of law that amendment proposed to be made by virtue of an interim application should not alter or substitute a new cause of action and it also should not cause prejudice to other side which cannot be compensated by costs. In the case on hand, trial commenced and evidence was let in. Based on the report of the Advocate Commissioner, the respondent is making an attempt to introduce a new cause of action and the same, in my considered opinion, would change the character of the suit. If the amendment is allowed, it will also take away the accrued right of the petitioner/ defendant. Since the amendment totally changes the nature and character of the suit and it also takes away the rights accrued in favour of the petitioner/

defendant, this Court is of the view such amendment ought not to have been permitted by the trial court. In the light of the decision reported in 2017 (5) LW page 201, Rajendran and another Vs. Annasamy Pandian (D) Thr.Lrs. Karthyayani Natchiar. wherein the relevant paragraph of the judgement is as follows:

“ 11. In terms of Order XXIII Rule 1(3) (b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the word “sufficient grounds”, there are two views: One view is that these grounds in clause (b) must be “ejusdem generis” with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or at least analogous to them; and the other view was that the words “other sufficient grounds” in clause (b) should be read independent of the words a 'formal defect' and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with “formal defect” envisaged under clause (a) of Rule (1) sub-rule(3), we choose not to elaborate any further on the ground contemplated under clause (b) that is “sufficient grounds”.

12. In the present case, the appellants have filed the suit describing the suit property as Survey No.192/9 but the respondents are said to have transferred the patta for the suit property settling as Survey No.192/14. The defect in the survey number of the suit property goes to the very core of the subject matter of the suit and the entire proceedings would be fruitless if the decree holder is not able to get the decree executed successfully and thus, the said defect will constitute to be a “formal defect” within the meaning of Order XXIII Rule 1(3) (a) CPC. That apart the respondents are said to have executed an Inam Settlement Deed on 21.09.2012, in favour of their son Aranmanai Pandian, mentioning the suit property as Survey No.192/14. We are convinced that the case of the appellants would fall under clause (a) of Rule 1 (3) CPC”.

D.KRISHNAKUMAR. J,

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10. In such opinion, allowing such prayer to include fresh T.S.No.136/2A will not change the nature and character of the suit and will give rise to fresh cause of action.

11. For the reasons stated above, the order passed by the trial court in I.A.No.2264 of 2015 is set aside by allowing this Civil Revision Petition and the respondent is granted liberty to workout his remedy by filing a fresh suit in accordance with law in respect of the new survey number.

12. Accordingly, the Civil Revision Petition is allowed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

30.10.2017

Speaking/Non-speaking order

Index : Yes/No

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The I Additional District Munsif Court,
Coimbatore.

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