

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2985 of 2013

V.Kuppusamy : Petitioner

versus

1.Venkat @ Jai Venkatraman

2.Govindharaj

3.Sadaiyappan : Respondents

PRAYER: Revision filed against the order dated 29.1.2013, in I.A.No.336 of 2012 in O.S.No.1 of 2008 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

For petitioner :: Mr.R.Sunil Kumar

For respondents :: no appearance

ORDER

The suit filed by the petitioner for declaration and injunction was dismissed by the learned District Munsif, Neyveli. The decree was taken up in appeal. The Appellate Court remanded the matter for fresh consideration.

2. Before the Trial Court, the petitioner filed an application seeking amendment of the schedule and more particularly, correcting the boundaries of the suit property. The application was dismissed by the learned Trial Judge on the ground that the remand order was very specific

and that there is no question of enlarging the scope of the judgment passed by the Appellate Court. The said order is under challenge in this civil revision petition.

3. The learned counsel for the petitioner contended that the very suit in O.S.No.1/2008 was remanded for fresh consideration. The petitioner wanted only amendment of the boundaries to prove that they are in possession of a particular extent of property with specific boundaries. According to the learned counsel, without understanding the scope of the decree, remanding the matter for fresh consideration, the Trial Court dismissed the application for amendment.

4. None appeared for the first respondent.

5. The petitioner laid the suit in O.S.No.1/2008 for declaration and injunction. Since the petitioner failed to prove his title, the Trial Court dismissed the suit. When the matter was taken up before the First Appellate Court, the suit was remanded to the Trial Court for fresh consideration.

6. The petitioner, in the affidavit filed in support of the application in I.A.No.336 of 2012, contended that the correct boundaries were not mentioned in the schedule to the plaint filed and the same resulted in

dismissal of the suit.

7. The written statement filed by the respondents contain certain admissions with regard to the title of the petitioner with respect to the property in S.No.15/1A1A. The petitioner lost the civil suit as he was not in a position to prove the identity of the property. It was only to clear the doubt about the description of the property that the petitioner has filed the application. Even after amendment, it is for the petitioner to plead and prove that he is entitled to a decree of declaration with respect to the suit property. Since the entire suit was remanded for fresh consideration, the Trial Court ought to have permitted the petitioner to amend the plaint schedule. I am therefore of the view that the revision deserves to be allowed. The order dated 29 January 2013 is set aside and the application in I.A.No.336 of 2012 is allowed. The respondents are granted liberty to file additional written statement taking into account the amendment made to the plaint schedule.

8. In the result, the civil revision petition is allowed as indicated above. No costs. Consequently, M.P.No.1 of 2013 is closed.

21.06.2017

Index:Yes/no
tar

K.K.SASIDHARAN, J.

(tar)

To

The District Munsif cum Judicial Magistrate, Neyveli

C.R.P.(P.D.) No.2985 of 2013

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