

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.3126 of 2012
and
M.P.No.1 of 2012

Subburaya Kounder

.. Petitioner

vs

1.Ranganatha Kounder

2.Govindarasu Kounder

3.Selvarasu Kounder

.. Respondents

Revision filed under Article 227 of Constitution of India
against the Fair and Decretal order dated 4.6.2012 passed in
I.A.No.715 of 2012 in O.S.No.295 of 2009 on the file of the Principal
District Munsif, Tindivanam.

For Petitioner : Mr.G.Babu

For Respondents : Mr.T.Dhanasekaran (for R1)

No Appearance (for R2 & R3)

ORDER

This revision is directed against the order dated 04.06.2012 passed in I.A.No.715 of 2012 in O.S.No.295 of 2009 on the file of the learned Principal District Munsif, Tindivanam, dismissing the petition to amend the plaint schedule item 13. The petitioner is the plaintiff in the suit.

2. The plaintiff has filed I.A.No.715 of 2012 seeking to amend the schedule of property, alleging that due to inadvertence in the plaint schedule item 13, it has been wrongly stated as "western" instead of "eastern" and now only the petitioner came to know the said mistake crept in the plaint schedule item 13. The mistake crept in has also been stated in the proof affidavit of the petitioner. Therefore, it is necessary to amend the plaint schedule item 13. The mistake crept in was neither wilful nor wanton.

3. Resisting the petition, the first respondent filed counter stating that in his written statement he had clearly stated that the house situated on the western side belongs to the defendant and the eastern portion alone was allotted to the petitioner. It is stated that in order to grab the property and the house belonging to first

respondent, the petitioner has wrongly mentioned in the suit schedule item 13 and filed the suit. As per the Hon'ble Apex Court decision, amendment application after the proof affidavit in chief examination has been filed cannot be entertained. If the amendment is allowed, the nature of the suit would be changed and, therefore, prayed for dismissal of the petition.

4. Upon consideration of the rival submissions and upon relying upon the decision of this Court in *Vidyabai and others v. Padmalatha and another*, reported in 2007 (1) TLNJ 492, the trial Court, dismissed the petition. Aggrieved by the same, the petitioner has preferred this Civil Revision Petition.

5. I heard Mr.G.Babu, learned counsel appearing for the petitioner and Mr.T.Dhanasekaran, learned counsel appearing for the first respondent and also perused the materials available on record. No representation on behalf of the respondents 2 and 3.

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6. It appears that the trial of the suit had commenced and the petitioner has filed his proof-affidavit in chief examination on 28.03.2012. Thereafter, the petitioner has filed petition to amend the

plaint schedule item 13 stating that instead of mentioning as "eastern", it has been wrongly mentioned as "western".

7. According to the first respondent, in his written statement filed on 08.11.2009, he categorically stated that the house situated on the western side belongs to him. Despite the same, the petitioner has not taken steps to amend the schedule of property immediately and only after the trial commenced, he had filed the petition. Therefore, as per the Amended Act, the petition to amend cannot be entertained, which the trial Court has correctly done.

8. On a reading of the written statement of the first respondent, it is seen that he had categorically stated that it is false to state that in S.No.691/15 measuring an extent of 0.350 square metre, the western portion was a vacant site and a pathway exists. In fact, on the western side, the first respondent's house was situated.

9. It appears that there were 13 items mentioned in the plaint schedule. The petitioner seeks amendment only of item 13 by stating that half share in the vacant site and pathway on the western side. Though amendment petition was filed belatedly after the

examination of the petitioner in chief, in order to adjudicate upon the disputes between the petitioner and the respondents, it is necessary to amend the plaint schedule item 13.

10. Order 6, Rule 17 of Code of Civil Procedure, no doubt prohibits amendment after the evidence is over, but when the Court comes to the conclusion that in spite of due diligence party could not have raised the matter before commencement of the trial, the same can be allowed even after the trial is over. The provision of law for amendment is provided enabling the Court to determine the real controversy between the parties. Therefore, the trial Court ought to have allowed the petition considering the facts and circumstances of the case and in order to meet the ends of justice.

11. If the amendment is allowed, no prejudice would be caused to the respondents, particularly the first respondent. On the other hand, if not permitted to amend the plaint schedule item 13, the petitioner would be put to irreparable loss and damage as the suit is one for partition and separate possession. Considering the nature of amendment, the first respondent is given liberty to file an additional written statement.

12. In the result, the Civil Revision Petition is allowed and the order of the trial Court dated 04.06.2012 in I.A.No.715 of 2012 in O.S.No.295 of 2009 is set aside. The respondents, particularly, the first respondent is permitted to file additional written statement within a period of one month from the date of receipt of a copy of this order and the trial Court is directed to dispose of the suit within a period of three months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2017

Note: Issue order copy on 13.07.2018

vs

Index : Yes/No

Internet : Yes/No

To

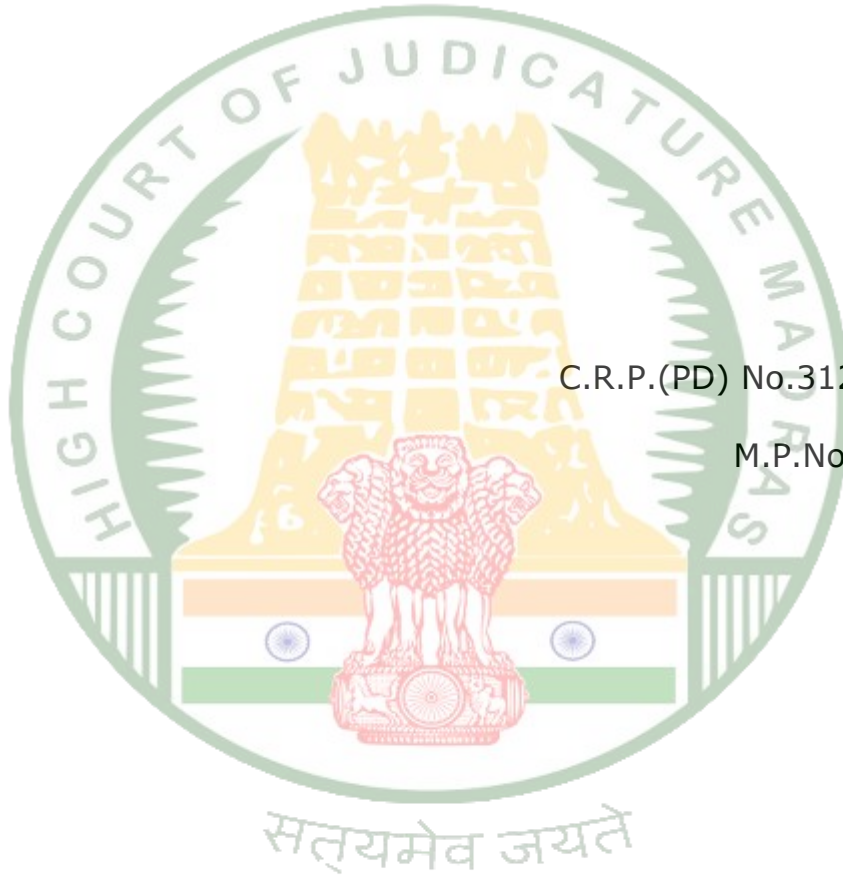
The Principal District Munsif Court,
Tindivanam.

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M.V.MURALIDARAN, J.

VS



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