

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.447 of 2013
& M.P.No.1 of 2013

Padmavathy

... Petitioner

Vs.

Balu

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.09.2012 made in I.A.No.1138 of 2011 in O.S.No. 95 of 2007 on the file of the Principal District Munsif Court, Pondicherry.

For Petitioner : M/s.R.Sakunthala

For Respondent : Mr. R.Thiagarajan

ORDER

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The Civil Revision Petition is filed against the fair and decretal order dated 11.09.2012 made in I.A.No.1138 of 2011 in O.S.No. 95 of 2007 on the file of the Principal District Munsif Court,

Pondicherry.

2. The petitioner is the plaintiff and respondent is the defendant in O.S.No.95 of 2007 on the file of the Principal District Munsif Court, Pondicherry. The petitioner filed suit for declaration that the petitioner is the absolute owner of A and B schedule properties and for a direction to the respondent to vacate and hand over the possession of the B schedule property to the petitioner. According to the petitioner, she purchased the land in which super structure now stands and demolished the then existing damaged hut, she put up four rooms and another room in northern side of the suit property. Four rooms are described in A schedule property and one room is described in the B schedule property. According to the petitioner, the respondent trespassed into B schedule property. In such circumstances, she has filed the suit for the reliefs stated above. The respondent filed written statement and is contesting the suit. The petitioner filed I.A.No.1138 of 2011 for amendment to correct the first prayer as declaring the petitioner is the absolute owner of the B schedule property: 12" X 12" only one room.

3. The respondent filed counter affidavit denying all the averments made by the petitioner and contended that the

petitioner was never in possession of A and B schedule properties. Only the respondent is in possession of both the A and B schedule properties, even before purchase by the petitioner. He did not trespass into B schedule property and he also filed I.A.No.2901 of 2010 for framing additional issues with regard to the maintainability of the suit in view of the pecuniary jurisdiction. The petitioner has not valued the suit properly and paid the correct Court fee. The trial commenced long back and when the suit was posted for cross examination, the petitioner has come out with the present application, which is not maintainable.

4. The learned Judge referring to the Judgment of the Hon'ble Apex Court reported in **2012 (1) SCC 568 (J.Samuel and others v. Gattu Mahesh and others)** dismissed the application on the ground that the alleged mistake is not a typographical error; the petitioner is introducing a new case; if amendment is ordered, the valuable right accrued to the respondent will be defeated; As per the Order VI Rule 17 of C.P.C., the amendment could be ordered after commencement of trial, only if parties allege and prove that in spite of due diligence, the petition for amendment could not be

filed before commencement of trial. The learned Judge also held that there is a difference in the extent mentioned in both the suit properties.

5. Against the said order of dismissal dated 11.09.2012 made in I.A.No. 1138 of 2011, the present Civil Revision Petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

7. A reading of the plaint in entirety shows that the claim of the petitioner is only with regard to B schedule property. According to the petitioner, the respondent trespassed into B schedule property, which is one room in the northern side of the suit property. The petitioner nowhere in the plaint has stated that the respondent is interfering with her possession in respect of A schedule property. This clearly shows that the petitioner has made a mistake in seeking declaration of title in respect of A schedule property. By amendment, the petitioner is restricting her claim in

respect of B schedule property only and she is not introducing any new case. Further, in view of the application filed by the respondent in I.A.No.2901 of 2011 for framing additional issues, to decide the issues whether the suit is maintainable in the Court due to lack of pecuniary jurisdiction and whether the petitioner has valued the suit property correctly and paid the correct Court fee. Trial was not proceeded with.

8. The learned Judge has not properly appreciated the averments made in the plaint, application and committed irregularity in dismissing the application. Therefore, the impugned order passed by the learned Judge is liable to be set aside and it is hereby set aside.

9. In the result, the Civil Revision Petition is allowed and the order passed by the learned Judge dated 11.09.2012 made in I.A.No.1138 of 2011 is set aside. No costs. Consequently connected Miscellaneous Petition is closed.

09.10.2017

Index : Yes/No
dm/kj

V.M.VELUMANI, J.

dm/kj

To

The Principal District Munsif,
Pondicherry.



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