



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2017

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.R.P.PD(MD)No.1911 of 2015

and

M.P.(MD)No.1 of 2015

WEB COPY

J.Boby Andrew Jules

... Petitioner / 4th respondent / 4th defendant
Vs.

1.Navaneetham John

2.Sam Abel Jones

... Respondents 1 & 2 / Petitioners /
Plaintiffs

3.Esthar Paulina Jone

4.Mavis Depika Sundara Vadana

5.Kennath Eugene Walker

... Respondents 3 to 5 / Respondents 1 to 3 /
Defendants 1 to 3

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.03.2015 in I.A.No.102 of 2013 in O.S.No.14 of 2011 passed by the III Additional District Court, Tirunelveli.

For Petitioners : Mr.K.Esakki

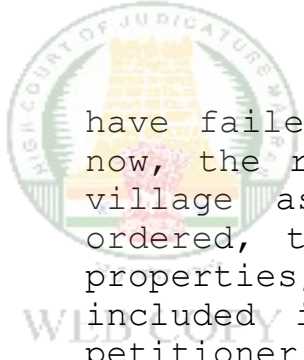
For Respondents : Mr.Ananth C.Rajesh for R1 and R2

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 05.03.2015 in I.A.No.102 of 2013 in O.S.No.14 of 2011 passed by the III Additional District Court, Tirunelveli.

2.The petitioner is the 4th defendant in the suit in O.S.No.14 of 2011. The respondents 1 and 2 are the plaintiffs. The defendants 3 to 5 are the defendants 1 to 3 in the suit. The respondents 1 and 2 filed the above said suit for partition against the petitioner and the respondents 3 to 5. The respondents 3 to 5 and the petitioner filed their written statement. The respondents 1 and 2 filed an application in I.A.No.102 of 2013 to amend the plaint i.e. schedule of the property by incorporating the name of the Village, Taluk and District on the ground that the respondents 1 and 2 came to know about this said omission only when their counsel prepared for conducting the trial. The respondents 3 and 4 did not file counter statement. The 5th respondent made endorsement that he has no objection.

3.The petitioner filed a counter statement and opposed the said amendment. According to the petitioners, knowing fully well about the particulars of the property, the respondents 1 and 2



have failed to furnish the same in the plaint schedule and even now, the respondents 1 and 2 have not given name of the correct village as Manjuvelai village and if the said amendment is ordered, the entire nature of the suit will be changed and the properties, which are not belonging to the parties, will be included in the suit. Only to drag on the proceedings, the petitioner has come with the present petition for amendment.

4.The learned Judge considering the averments made in the affidavit and in the counter affidavit and perused the materials allowed the application holding that the amendment sought for is only before commencement of trial and the said amendment will not change the nature of the suit. Against the which, the present Civil Revision Petition is filed.

5.The learned counsel for the petitioner submitted that the learned Judge erroneously allowed the application having failed to see that the respondents 1 and 2 have not exercised the due diligent as contemplated under Order 6 Rule 17 C.P.C. and respondents 1 and 2 have failed to furnish the necessary particulars. Even now the respondents 1 and 2 have not furnished the correct the name of the Village in which, the suit property is situated. Hence, the application has been filed only to drag on the proceedings.

6.The respondents 3 to 5 were set ex partee in the application and the notice to the respondents 3 to 5 are dispensed with as against them.

7.The learned counsel appearing for the respondents 1 and 2 submitted that amendment is sought for before commencement of trial and it is only to incorporate the name of the Village, Taluk and District and hence, the said amendment will not change the cause of action and nature of the suit and it did not introduce the new cause of action.

8.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 1 and 2 and also perused the materials on record.

9.The amendment sought for by the respondents 1 and 2 is to incorporate the name of the village, Taluk and District. The amendment petition has been filed before the commencement of the trial and the petitioner has stated that even now the respondents 1 and 2 have not given name of the correct village. The learned Judge considered all the materials and concluded that the amendment will not change the cause of action and amendment sought for is before commencement of trial. The learned Judge has also held that the petitioners have stated that the respondents 1 and 2 have mentioned name of the village wrongly. But the petitioners



have not stated in which survey number the suit property is situated. The learned Judge appreciated all the facts in proper perspective and allowed the application. Hence, there is no irregularity or illegality warranting interference.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected M.P. is closed.

11. The learned counsel for the respondents 1 and 2 submitted that the suit is of the year 2011 and the respondents 1 and 2 are senior citizens and hence, he prayed for a direction to dispose of the suit as expeditiously as possible.

12. In view of the same, the Court below is directed to dispose of the suit as expeditiously as possible in any event on or before 30.06.2017.

sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

The III Additional District Judge, Tirunelveli.

+1 cc to Mr. M. Arumugam, SR.No.250

+1 cc to Mr. Ananth C. Rajesh, SR.No.346

C.R.P. (MD) No.1911 of 2015
03.01.2017

nbj

AES/RR-ME/SAR2/27.01.2017/3p/4c