



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

**CRP(MD).No.115 of 2017 and
CMP(MD).No.382 of 2017**

1.Rajathi
2.Prema
3.Revathi
4.Rekha

: Petitioners / Petitioners/Plaintiffs

Vs.

1.Gunasekar
2.Prakash
3.Natarajan
4.Selvi
5.Maharajapandi
6.Arulmigu Santhanamariamammal Thirukoil Statute,
rep. by its Dharmagartha : Respondents / Respondents/Defendants

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.09.2016 in I.A.No.222 of 2016 in O.S.No.11 of 2013 on the file of the District Munsif Court, Thiruchendur.

For Petitioner : Mr.G. Prabhurajadurai

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order dated 06.09.2016 in I.A.No.222 of 2016 in O.S.No.11 of 2013 on the file of the District Munsif Court, Thiruchendur.

2. The revision petitioners are plaintiffs. The respondents are defendants. The petitioners filed suit in O.S.No.11 of 2013 on the file of the District Munsif Court, Thiruchendur, for declaration and injunction. The respondents filed written statement and contested the suit and the trial commenced and the evidence was recorded and closed. The suit is posted for arguments. At that stage, the petitioners filed I.A.No.222 of 2016, for amendment of the plaint by amending Survey Number in the suit property.



3. According to the petitioners, at the time of filing suit petitioners' mother gave instructions to the Advocate and by mistake and in advertence, wrong survey number was given. At the time of preferring for arguments only the mistake was found. Unless amendment is ordered, petitioners will be put to irreparable loss and hardship.

4. The respondents filed counter and submitted that respondents filed written statement in the month of April 2013 and in the written statement itself, they have stated that Survey number and boundaries given by the petitioners are no way connected with the suit property. PW.1 was cross-examined with regard to Survey number and if application for amendment is ordered, it will change the entire cause of action and it will introduce a new case. The application filed by the petitioners is belated one.

5. The learned Judge considering all the averments made in the affidavit and counter affidavit and also materials on record and judgments relied on by the counsel for the petitioners, dismissed the application holding that amendment to the plaint is discretion of the court and it must be exercised judicially. By amendment, the petitioners are seeking to introduce introducing new cause of action and the petitioners have no locus standi to file application at this stage.

6. Against the said order of dismissal, the petitioners have filed the present Civil Revision Petition.

7. The learned counsel appearing for the petitioners submitted that the learned Judge erred in holding that by amendment a new cause of action is introduced. The learned Judge failed to see that the amendment can be ordered at any stage. Unless the mistake in the survey number is corrected, the petitioners would be put to irreparable loss and hardship.

8. The learned counsel appearing for the petitioners, in support of his contention, relied on the Judgment reported in 2004 (2) MLJ 211 (Sengodan and another Vs. Sengodan and others) and 2003 (2) MLJ 722 (C.K.Philips (deceased) and others Vs. T.A.Shanmugam (deceased) and others) and submitted that there must be liberal approach in deciding the application for amendment, particularly, in the case where the other side can be compensated with costs and if the amendment sought for is to correct, the clerical or arithmetic mistakes in the judgments, decrees or orders, it may be done at any time by the court, either by its own motion or on the application of any of the parties.

<https://hcservices.ecourts.gov.in/hcservices/>

9. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.



10. The petitioners filed suit for declaration and injunction and they have given specific survey number and boundaries for the suit property. The respondents filed written statement and stated that the both Survey numbers and boundaries are not correct and not related to the suit property. PW.1 was cross examined with regard to the Survey Numbers given in the suit property. The petitioners have not filed petition for amendment at the earlier stage. The learned Judge has considered the fact that when the suit is posted for judgment on 13.04.2016. At that stage, the petitioners have filed present application.

11. It is well settled that at any stage petition for amendment can be filed. But such amendment should not cause prejudice to other side and should not introduce a new cause of action and change the nature of the suit.

12. In the present case, the petitioners seek to change survey number in the suit property. It would change the property with regard to which petitioners seeks declaration and injunction. In the circumstances, the Judgment relied on by the petitioners, are not applicable to the facts of the present case.

13. The learned Judge considered all the materials on record in proper perspective and has given cogent and valid reasons for dismissing the Interlocutory Application in I.A.No.222 of 2016 in O.S.No.11 of 2013. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

14. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To
The District Munsif Court, Thiruchendur.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate, SR No.3453.

TRP

PSM/CM-MSA/28.02.2017/3P/3C