



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2017

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.1848 of 2017

and

CMP(MD)No.9726 of 2017

T.Subramanian ... Petitioner/Petitioner/Plaintiff
vs.

Karunanidhi ... Respondent/Respondent/Defendant

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.11.2016 in I.A.No.667 of 2016 in O.S.No.148 of 2013 on the file of the District Munsif Court, Sivagangai.

For Petitioner : Mr.S.Pugalendhi

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 30.11.2016 in I.A.No.667 of 2016 in O.S.No.148 of 2013 on the file of the District Munsif Court, Sivagangai.

2.The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed a suit in O.S.No.148 of 2013 on the file of the District Munsif, Sivagangai, for permanent injunction. Initially, the petitioner/plaintiff filed I.A.No.484 of 2014 to amend the plaint in respect of the area in New S.No.127/6, old S.No.63/7 to an extent of 0.1.80 Ares of 4.44 cents instead of 1.60.0 Ares and also in respect of description of boundary towards east and west. The said interlocutory application was allowed vide order dated 30.10.2014. Thereafter, the petitioner filed the present interlocutory application in I.A.No.667 of 2016 to amend the plaint in respect of description of boundaries towards west, south and north. The said application was dismissed vide order dated 30.11.2016. Aggrieved by the said order, the petitioner has filed the present revision petition.

3.Learned counsel for the petitioner submits that the revision petitioner/plaintiff has clearly informed the boundaries to the Advocate before filing the suit. However, the lower Court advocate has wrongly mentioned the boundaries in the plaint and



hence the plaintiff filed the said amendment petition. He would further submit that the amendment has nothing to do with the pleadings and the Court can allow the amendment petition at any stage of the proceedings even after the commencement of trial as per Order 6 Rule 17 CPC.

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4. Heard the learned counsel for the petitioner and perused the materials available on record. In view of the order that is going to be passed, notice to respondent is not necessary.

5. Perusal of the impugned order shows that the revision petitioner earlier filed interlocutory application seeking amendment of in respect of description of boundaries in the suit property towards east and west, stating that he informed the Advocate about the boundaries, but the Advocate wrongly mentioned in the plaint. The Court below allowed the said application. However, the revision petitioner has filed the present interlocutory application seeking amendment in respect of description of boundaries towards west, south and north, stating that the Advocate has wrongly given the boundaries.

6. The Court below has observed that had really the details of boundaries in the suit property been wrongly given in the plaint by the Advocate, the revision petitioner/plaintiff ought to have got it corrected in the earlier interlocutory application seeking amendment and therefore, the Court below held that the contention in the present interlocutory application that the earlier amendment of boundaries itself is false, is wholly unacceptable. Further, as per Order 6 Rule 17 CPC, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In this case, there is no explanation on the part of the revision petitioner as to why he did not inform the Court about the error in the boundaries of the suit property and therefore, the plea of the revision petitioner in the present interlocutory application that the Advocate has wrongly given the boundaries, despite the earlier amendment petition being allowed, cannot be accepted.

7. As rightly held by the Court below, there is no explanation on the part of the revision petitioner why he did not take steps to get the boundaries of the suit property corrected in the earlier amendment petition itself and without doing so, filing of the present interlocutory application seeking amendment of boundaries stating that the earlier amendment of boundaries itself is wrong does not show bona fide on the part of the revision petitioner and it has to be presumed that the revision petitioner is adopting delaying tactics. Hence, this Court finds no infirmity or perversity in the findings of the Court below warranting interference by this Court. Hence, this Civil Revision



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Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD-I)

/True Copy/

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Sub Assistant Registrar

To

The District Munsif,
Sivagangai.

BALA
JS/KP/SAR.3/6.12.2017/2P-2C

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