



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.237 and 238 of 2017 (PD)

and

C.M.P. (MD) No.1101 of 2017

Chitra

...Petitioner/Petitioner / Plaintiff
in both C.R.Ps.

Vs

1.M.Marialeena

2.A. Micheal

...Respondents/ Respondents/ Defendants
in both C.R.Ps.

PRAYER in both C.R.Ps: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, to set aside the Fair and decree order made in I.A.Nos.54 & 55 respectively of 2016 in O.S.No.1664 of 2011 on the file of learned I Additional District Munsif, Trichy, dated 24.11.2016, by allowing this revision.

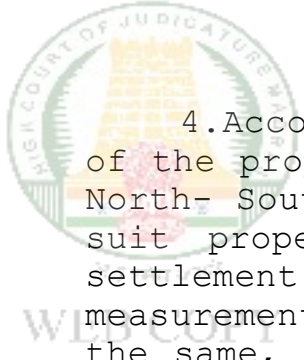
For Petitioner : Mr. R. Sundar

COMMON ORDER

The issue involved in both the CRPs are interlinked and hence, both CRPs are disposed of by common order.

2.The petitioner has filed these Civil Revision Petitions to set aside the Fair and decreetal order made in I.A.Nos.54 & 55 of 2016 in O.S.No.1664 of 2011 passed by the learned I Additional District Munsif, Trichy, dated 24.11.2016.

3.The petitioner is the plaintiff. The respondents are the defendants in the suit. The petitioner filed suit in O.S.No.1664 of 2011 before the learned I Additional District Munsif, Trichy for injunction. The respondents filed written statement. After completion of evidence, suit was posted for arguments on 10.12.2015 and after taking number of adjournments for arguments, the case was posted to 20.01.2016. At that time, the petitioner filed two applications in I.A.Nos.54 and 55 of 2016 to re-open and



4. According to the petitioner, the measurement of the schedule of the property wrongly given as 144 Feet East - West and 42 feet North- South instead of 144 North-South and 42 feet East-West. The suit property was settled on her by her grand-mother by the settlement deed, dated 25.10.2006. In the settlement deed, the measurement of the property is wrongly given. On coming to know of the same, the petitioner filed O.S.No.1203 of 2013 on the file of the learned District Munsif, Trichy to rectify the description of the property. By the judgment and decree, dated 04.08.2015 the said suit was decreed. After the decree, a rectification deed was also registered. In the circumstances, the amendment of the plaint is necessary and prayed for allowing the petitions to re-open and amendment.

5. In the above said applications, the respondents filed counter affidavit and opposed the said applications and submitted that the petitioner obtained decree in O.S.No.1203 of 2013 for behind their back and that the rectification deed is hit by principles of Lis pendens.

6. The learned Judge considering the averments in the affidavit, counter affidavit and materials on record and the fact that the amendment sought for is post trial amendment and petitioner did not bring it to the notice of the Court in O.S.No.1203 of 2013 and decree passed therein and rectification deed, dismissed the applications holding that the petitioner has not approached the Court with clean hands.

7. Against the said order of dismissal, the petitioner has come out the present two Civil Revision Petitions.

8. The learned counsel appearing for the petitioner submitted that the amendment sought for will not change the character of the suit. The petitioner has given reason for not filing the application before the commencement of trial and has stated that the mistake was found out by the present counsel and immediately, applications are filed. It is not the intention of the petitioner to suppress the O.S.No.1203 of 2013. It is well settled that post trial amendment also can be permitted, if valid reason is given for not filing application before commencement of the trial.

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

10. From the materials on record, it is seen that the petitioner has filed two applications to re-open and for amendment with regard to measurement of the description of the property in the plaint schedule. The said applications were filed when the [~~https://hcs.eas.gov.in/hcs/~~](https://hcs.eas.gov.in/hcs/) service was not in use for arguments after completion of evidence by both parties. The learned counsel for the respondent submitted that the petitioner has taken number of adjournments for arguments. The



learned Judge has taken note of the fact that when the trial has commenced on 26.11.2012 and was completed on 10.12.2015. The petitioner took 6 adjournments from 10.12.2015 to 20.01.2016 for arguments without arguing the case and on 20.01.2016, the petitioner has come out with the present applications. The learned Judge has held that the power of the Court to order post-trial amendment is restricted and amendment can be ordered only when parties prove that inspite of due diligence, application for amendment could not be filed before commencement of trial. The learned Judge considering the facts of the present case and provisions of Order 6 Rule 17 of Civil Procedure Code in proper perspective, dismissed the application on the ground that petitioner has not given any valid reason for post-trial amendment and petitioner has not approached the Court with clean hands as she has not brought to the notice of filing of O.S.No.1203 of 2013 and decree, dated 04.08.2015 and deed of rectification when the trial was in progress. The petitioner has obtained a decree and rectification deed was registered behind the back of the respondents. In the circumstances, the learned Judge has rightly dismissed the application and there is no illegality or irregularity warranting interference by this Court.

11.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Record)

/True Copy/

Sub Assistant Registrar

To
The I Additional District Munsif,
Trichy.

Copy to:The Record Keeper,
VR Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr.R.Sundar, Advocate SR.No.6319

am

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