



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.315 of 2017 (PD)

and

C.M.P (MD) No.1579 of 2017

K.N.L.Subbiah
Defendant

....Petitioner/1st Defendant/1st

Vs.

1.Ganapathyammal
2.Subbiah
3.Thangaiah

....Respondents 1 to 3/Petitioners/
Plaintiffs

4.Syed Sulaiman

...4th Respondent/2nd Respondent/
2nd Defendant

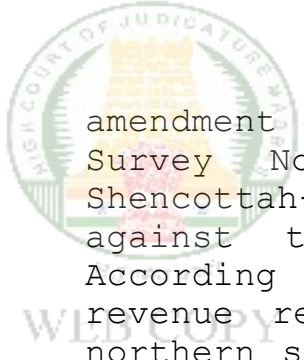
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the order in I.A.No.596 of 2014 in O.S.No.115 of 2010, dated 31.08.2016, on the file of District Munsif-cum-Judicial Magistrate, Shencottah and allow this Civil Revision Petition with costs.

For Petitioner : Mr.J.M.Hassanul Bazari

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order in I.A.No.596 of 2014 in O.S.No.115 of 2010, dated 31.08.2016, passed by the learned District Munsif-cum-Judicial Magistrate, Shencottah.

2.The petitioner is the first defendant, the respondents 1 to 3 are the plaintiffs and the fourth respondent is the second defendant in the suit. The respondents 1 to 3 filed suit in O.S.No.115 of 2010, before the learned District Munsif-cum-Judicial Magistrate, Shencottah for declaration and mandatory injunction. The petitioner filed written statement and contesting the suit. Trial commenced. The evidence was let in by both parties and the case was closed. The suit was posted for arguments. At that stage, the respondents 1 to 3 filed I.A.No.596 of 2014 for



amendment of northern boundary of 5th item of schedule property as Survey No.667 land belonging to Parameshwari instead of Shencottah-Surandai Road and in prayer portion instead of relief against the defendants, only against the first defendant. According to the respondents 1 to 3 only when they verified the revenue records and documents of title of owners of land on northern side, they came to know about the mistake. The owner of the said land were residing out side the State and respondents 1 to 3 did not know their address and only now the respondents 1 to 3 met the owners and filed petition for amendment.

3.The petitioner filed counter affidavit and denied that as per the documents, northern boundary of 5th item of suit property mentioned in the plaint is correct. P.W.1 also accepted the same. The respondents 1 to 3 have come out with the present petition when the suit was posted for arguments, only to drag on the proceedings.

4.The learned Judge considering the averments made in the affidavit and counter affidavit allowed the application directing the respondents 1 to 3 to pay a sum of Rs.1,000/- to the petitioner and the second defendant on or before 12.09.2016 holding that by amendment of boundaries alone, suit will not be decided and the final judgment will be passed only after considering all the documents and materials on record and held that the petitioner has not objected to amendment of prayer claiming relief against the petitioner alone.

5.Against the said order of allowing the I.A.No.596 of 2014, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner reiterated the grounds raised in the Civil Revision Petition and submitted that the learned Judge failed to properly appreciate the scope of provisions under Order VI Rule 17 of C.P.C., which categorically states that post trial amendment can be ordered only when the courts come to the conclusion that inspite of due diligence, the party could not have raised amendment before commencement of trial. By amendment, the respondents 1 to 3 are introducing new cause of action and new case. The learned Judge failed to see that the respondents 1 to 3 have not given any valid reason for amendment at the belated stage. In support of his contention, the learned counsel for the petitioner relied on the judgment reported in **2005(3) CTC 412 (Kasiappa Gounder v. Karuppan)** wherein at paragraph 16 it has been held as follows:-

"16.Order 6, Rule 17, C.P.C., has been amended by the Amendment Act with effect from 1.7.2002. A new proviso has been added to the rule, namely that no application for amendment of the pleadings 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 commencement of trial. Thus after the trial of the case has commenced, no application for amendment of the pleading shall, be allowed 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, Chief-examination of P.W.1 was completed and the Amendment Petition filed after the Trial is not maintainable."

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

8.The respondents 1 to 3 have sought for amendment of northern boundary of 5th item of the suit property as Survey No.667 land belonging to Parameshwari instead of Shencottah-Surandai Road and amendment of prayer portion claiming relief against the petitioner/first defendant alone instead of defendants. The respondents 1 to 3 have stated that it is a typographical mistake and they came to know about the same only after verifying the revenue records, documents and title of the owners of neighbouring land. By such amendment, no new cause of action introduce or character of the suit is not changed. The learned Judge has rightly held that suit will be finally decided after considering all the documents, boundaries of the property and extent of the land. The learned Judge also directed the respondents 1 to 3 to pay a sum of Rs.1,000/- as costs to the petitioner. The reason given by the respondents 1 to 3 for filing application for amendment at the stage of arguments, which is accepted by the learned Judge. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

9.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

am
To

The District Munsif-cum-Judicial Magistrate,
Shencottah.

Gjm/BS/27.2.17-2p-2C