



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.395 of 2017 (PD)

and

C.M.P(MD)No.1969 of 2017

Amudha Thevar

...Revision Petitioner/Petitioner/
Plaintiff

Vs.

1.Sundaramoorthy
2.Meenakshisundaram
3.Rajendran
4.Karmegam

...Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the order passed by the learned District Munsif, Thirumangalam in I.A.No.774 of 2016 in O.S.No.239 of 2006, dated 27.01.2017.

For Petitioner : Mr.S.Nateshraaja

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order passed by the learned District Munsif, Thirumangalam in I.A.No.774 of 2016 in O.S.No.239 of 2006, dated 27.01.2017.

2.The petitioner is the plaintiff and the respondents are the defendants in the suit. The petitioner filed suit in O.S.No.239 of 2006 before the learned District Munsif, Thirumangalam for injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property measuring 1 acre 40 cents. The respondents filed written statement denying the averments mentioned in the plaint. The petitioner filed reply statement in the month of August, 2014. Trial commenced. The petitioner let in evidence and evidence on behalf of petitioner was closed. The fourth respondent filed proof affidavit and the case was posted for cross-examination of D.W.1 by the petitioner. At that stage, the petitioner filed I.A.No.774 of 2016 for amendment of the plaint. According to the petitioner, instead of mentioning 26 cents by inadvertently he has mentioned the extent of the property as 1 acre and 40 cents. The petitioner has given



specific boundaries. Except the extent, all other particulars, especially boundaries are given correctly. By filing petition for amendment nature of the suit will not be changed and petitioner is not introducing any new case and new cause of action is introduced.

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3. In the above said I.A., the respondents filed counter and opposed the said application. The respondents submitted that the petitioner after 10 years of filing suit, after commencement of trial, has come out with the present application for amendment. The petitioner has not given valid reason for the delay.

4. The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the application holding that the petitioner has not given any reason for amendment after commencement of trial.

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

6. The petitioner has filed suit for injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property with regard to 1 acre 40 cents. After commencement of trial, after completion of evidence on his behalf and after fourth respondent has filed proof affidavit, when the suit was posted for cross-examination of D.W.1 by the petitioner, the petitioner filed an application for amendment. The petitioner has not given any reason for amendment after 10 years from the date of filing of the suit. The petitioner has not stated as to when he came to know about the mistake in the extent of the suit property. As per Order 6 Rule 17 of Civil Procedure Code, the Court has power to order amendment at any stage in the suit in order to determining the real questions in controversy between the parties. As per proviso to said Rule, the Court can order amendment after commencement of trial only when the party seeking amendment proves that inspite of due diligence he could not have filed petition for amendment earlier. In the present case, the petitioner has not stated inspite of due diligence he could not file application for amendment before commencement of trial. The suit is for injunction, even though the petitioner claimed relief of permanent injunction to an extent of 1 acre 40 cents, now he is seeking relief to restrict his claim only to 26 cents. According to the petitioner, he has given specific and correct boundaries for 26 cents. It is well settled that Court can mold the relief and grant decree to a lesser extent. It is for the petitioner to prove that he is in possession of the 26 cents and the respondents are interfering with his peaceful possession and enjoyment of the property. In the circumstances, the learned Judge has rightly dismissed the application and there is no illegality or irregularity warranting interference by this Court.



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

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/True Copy/

Sd/-

Assistant Registrar (AS)

Sub Assistant Registrar

am

To

The District Munsif, Thirumangalam.

+1CC to Mr.S.Nateshraj, Advocate Sr.No.11491

GJM/PM/PN/16.3.17-3p-3C

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