

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.06.2018

CORAM

THE HON'BLE MR. JUSTICE **P.VELMURUGAN**

CRP.(PD).No. 170 of 2018 and
CMP.No. 973 of 2018

K.C.Duraisamy

... Petitioner

Vs.

1. P.Thirunavukkarasu,
2. Thenayal
3. K.S.Ramasamy

... Respondents

Prayer : Civil Revision Petitions filed Under Article 227 of Constitution of India, to set aside the fair and decretal order 13.12.2017 made in I.A.No.29 of 2017 in O.S.No.195 of 2011 on the file of the learned Second Additional District Munsif, Bhavani by allowing this Civil Revision Petition.

For Petitioner : Mr.N.M.Manokaran

For Respondents

For R1 : Mr.S.Kaithamalai Kumaran

ORDER

This Civil Revision Petition has been filed against the Order dated 13.12.2017 made in I.A.No.29 of 2017 in O.S.No.195 of 2011 on the file of the learned Second Additional District Munsif, Bhavani.

2. The revision petitioner has filed a suit in O.S.No.195 of 2011 before the learned District Munsif, Bhavani for declaration and permanent injunction. When the matter was pending before the trial Court, the revision petitioner filed an application under Order 6 Rule 17 read with Section 151 of CPC., to amend the portion of the plaint. After giving due opportunity of hearing, the petition was dismissed by the trial Court. Feeling aggrieved by the order passed by the trial Court, the revision petitioner filed this revision petition before this Court.

2. The main contention raised by the learned counsel for the revision petitioner is that the document No.3070 of 2009 dated 20.10.2009, was omitted to be mentioned in the plaint, since he was under the impression that the document was not released and the number was not allotted. Later on, he came to know that the document was released during the pendency of the suit.

3. The learned counsel for the first respondent would submit that the alleged document in Doc.No.3070 of 2009 shows that even in the year 2009 itself the same was registered and document number was allotted, but the suit filed only in the year 2011 and the application filed in the year 2017. Hence the trial Court rightly dismissed the application and there is no reason to interfere with the order passed by the trial court.

4. Heard the learned counsel on either side. Though notices have been served, none appeared for the second and third respondents. Perused the records.

5. On a perusal of records, it is seen that the revision petitioner filed a suit in O.S.No.195 of 2011 before the learned District Munsif, Bhavani for declaration and permanent injunction. Thereafter he filed an application in I.A.No.29 of 2017 in O.S.No.195 of 2011 to amend the plaint and the same was dismissed by the trial Court. It is settled proposition of law that the amendment should not change the character of the suit. The main contention of the learned counsel for the revision petitioner is that the document number was omitted inadvertently, since he was under the impression that the document was not registered and document number was not allotted. However, whereas the document number shows that it was registered in the year 2009, prior to the filing of the suit. Therefore, the contention raised by the learned counsel for the revision petitioner is not acceptable. Even assuming that, the amendment sought for are not changing the characters of the suit, the revision petitioner has filed the application after the period of 10 years from the date of the registration of the document. Therefore, necessarily the respondents have to be compensated with terms of cost for the inconvenience caused by the revision petitioner. This Court is of the view that this revision petition is liable to be allowed with a condition that the revision petitioner is directed to pay a cost of Rs.50,000/- to the contesting respondent.

P.VELMURUGAN, J.,

rts

6. In view of the above discussion, the revision petitioner is directed to pay a cost of Rs.50,000/- (Rupees fifty thousand only) to the contesting respondent on or before 22.06.2018. The learned counsel on both parties are directed to file cost memo before the trial Court on 25.06.2018. After the receipt of the cost memo, the trial Court is directed to proceed the case in accordance with law.

7. With the above directions, the civil revision petition is disposed of. Consequently, connected miscellaneous petition is also closed. No costs.

12.06.2018

Index :Yes/No
Internet :Yes/No
Speaking order/Non-speaking order

rts

To

1. The Presiding Officer,
II Additional District Munsif,
Bhavani

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