

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.3472 of 2014 and
M.P.No.1 of 2014

Haridoss

...Petitioner/Plaintiff/Petitioner

Vs.

Vajjaravelu

..Respondent/Defendant/Respondent

Prayer

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 17.06.2014 in I.A.No.148 of 2014 in O.S.No.176 of 2011 passed by the Principal District Munsif, Cheyyar, Thiruvannamalai Distirct.

For Petitioner : Mr. V. Meenakshi Sundaram

For Respondent : Mr. V. Umapathy

O R D E R

The petitioner has been preferred this Civil Revision Petition against the fair and decreetal order, dated 17.06.2014 made in I.A.No.148 of 2014 in O.S.No.176 of 2011 passed by the learned Principal District Munsif , Cheyyar.

2. The brief facts of the case are as follows:

The petitioner filed the suit in O.S.No.176 of 2011 for declaration declaring that the plaintiff and plaintiff's vendor to enjoy the plaintiff's peaceful possession of the plaint schedule property. The respondent also filed an additional written statement.

3. According to the petitioner, the extent mentioned in the schedule to the suit is 2020 sqft., instead of 1938 sqft., Immediately, when the petitioner came to the knowledge of this error, he filed an application in I.A.No.148 of 2014 seeking to amend the plaint schedule, so as to reflect the correct extent of 1938sqft.,

4. After hearing both sides, the Lower Court dismissed the application and relevant portion of the order is extracted below:

"The plaintiff is the petitioner herein and he has filed the two suits in O.S.No.176 of 2011 for the relief of permanent injunction and in O.S.No.162 of 2012 for the relief of declaration of his title by perfect adverse possession. Now the petitioner has preferred this application to amend the schedule of the suit property by adding the new survey number and changing the extent and boundaries of the suit property. The petitioner who claims title over the suit property, based on the adverse possession must be well aware of the extent and boundaries of the property in his possession. But the plaintiff avers that he came to know about the extent only on the basis of the revenue records recently and therefore, he wants to amend the schedule of the suit property. He has already produced the xerox copy of the revenue records certified by the Village Administrative Officer along with the petition under Order 7 Rule 14(3) of CPC which was dismissed, concluding that the Village Administrative Officer was not the competent authority to furnish the revenue records. The respondent's averment that the petitioner averred in the application filed for the appointment of a commissioner averring that he was not able to measure the suit property since the respondent opposed to the same and this averment reveals that the petitioner is not in possession of the suit property, needs to be considered. More over, when the petitioner's claim over the suit property is mainly based on the adverse possession, this court is not able to find out any bonafide reason for allowing the amendment of the schedule on the basis of the revenue records. The suit in O.S.No.176 of 2011 was originally brought to the trial on 25.09.2012 and the suit in O.S.No.162 of 2012 on 12.02.2013. Already in both the suits two amendment applications have been filed and allowed. Likewise, the interim application for the appointment of commissioner were also filed and dismissed. The petitioner has already successfully dragged on the proceedings for more than 1 ½ years in both the suits. Whenever the suit is posted in the list, the petitioner files an interim application one after another. Anyhow, the petitioner who claims title and injunction on the basis of the adverse possession is bound to prove the extent of the land in his possession. He cannot simply rely on the revenue records of the property in the suit survey number. Therefore, this petition is liable to be dismissed.

5. It is clear from the order passed by the trial court in I.A.No.148 of 2014 that they have wrongly understood that the petitioner filed an application to amend the survey number and the entire case proceeded and thereafter, the final order passed by the trial court on the basis of the amendment sought for by the petitioner only for the purpose of Survey Number. However, on perusal of the application filed by the petitioner, it is seen that the said application was filed only to amend, the extent of the property. According to the petitioner, the extent of the property was wrongly mentioned as 2020 sqft., and the amendment sought for to incorporate the correct extent of 1938 sqft.

6. The learned counsel for the respondent also submits that the amendment is the only for the purpose of making amendment in the extent of the property, not in the Survey Number.

7. Considering the submissions of both counsels, and perusal of pleadings, this Court of the view that the petitioner filed in I.A.No.148 of 2014 only to amend the extent in the schedule to the plaint and not for the amendment in Survey numbers. Hence, Civil Revision Petition is allowed.

8. In view of the above, the petitioner is directed to make suitable amendment in the plaint.

9. Both the parties made request before this Court, for appropriate directions to court below, to dispose of the suit at the earliest point of time. Hence, this Court is directs the trial court to dispose of the suit in O.S.No.176 of 2011 within four months.

10. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

सत्यमेव जयते
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

msm
To

The Principal District Munsif,
Cheyyar,
Thiruvannamalai Distirct.

+1 CC to Mr.V. Meenakshi Sundaram, Advocate sr 43403.

C.R.P.PD.3472 of 2014

SP(23/07/2018)