



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.775 of 2018

and

CMP (MD) No.3437 of 2018

A.Rajeshkumar

.. Petitioner/petitioner/plaintiff

VS

Selvi

.. Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.02.2018 passed in I.A.No.677 of 2017 in O.S.No.193 of 2013 on the file of the learned Principal District Munsif Court, Padmanabapuram, by allowing this Civil Revision Petition with cost.

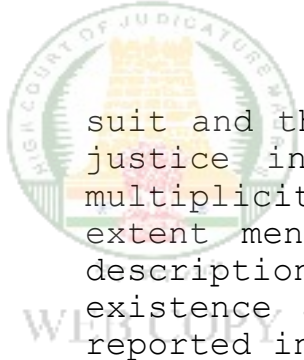
For Petitioner : Mr.V.Meenakshisundaram

For Respondent : Mr.K.P.Narayanakumar

ORDER

The case of petitioner is that he has filed the suit for declaration and injunction in respect of the suit property measuring 3.750 cents. The respondent as defendant filed written statement denying the right and as well as the extent of property. Thus an advocate commissioner was appointed and after inspection he has filed the report to the effect that survey number 540/10 is having an extent of 2.081 cents alone. In such circumstances the extent as mentioned in the plaint is not available and thus petitioner filed a petition for amendment of plaint to amend the extent of suit property as 2.081 cents instead of the original claim of 3.750 cents and as well as four boundary of property to be amended as stated in the Advocate commissioners report. The application was contested by the respondent by filing a detailed counter and after considering the petition and counter the Court below erroneously dismissed the application on the ground of delay and as well as on a wrong finding that the proposed amendment will change the nature and character of the suit.

2.The learned counsel for the petitioner submitted that the application if the Court comes to the conclusion that the proposed amendment is necessary for determining the issues involved in the



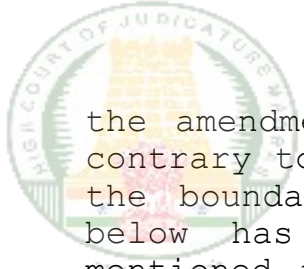
suit and the petition has to be allowed so as to render substantial justice instead of denying the amendment, which will result in multiplicity of litigation. The counsel further submitted that the extent mentioned in the document cannot be absolute one but the description of property can be mentioned based upon the factual existence and relied upon the judgment of this Honorable Court, reported in 2001 (2) MLJ 387.

3. The learned counsel for the respondent contended that the plaintiff cannot be allowed to amend the plaint on the basis of the commissioner's report but he must stand on his own documents. He has further submitted that even the boundary shown in the amendment is also not correct and the petition was filed after completion of evidence and when the suit was posted for arguments. The fact remains the report was filed in the year 2015 and the petition for amendment filed after delay of 2 years. As such the Trial Court has rightly dismissed the application and same does not warrant any interference. He has also relied upon the judgment of Hon'ble Supreme Court, reported in 2008 SAR (Civil) 641 stating that amendment application cannot be filed at the stage of argument. Further pointed out the Advocate Commissioner filed the report in the year 2015 but the petition for amendment came to be filed after delay of 2 years, that too completion of evidence and when the case was posted for arguments and as such the same cannot be allowed. The learned counsel further relied upon the judgment of this Court reported in 2017 (1) MWN (Civil) 714 and argued that application for amendment on the basis of report of advocate Commissioner cannot be entertained, when it introduce a new case, that apart amendment of plaint after trial is not permissible in law and the Court below is correct in dismissing the application and hence this Civil Revision Petition is liable to be dismissed.

4. I heard Mr.V.Meenakshisundaram, learned counsel for the petitioner and Mr.K.P.Narayana Kumar, learned counsel for the respondents and perused the entire records.

5. It is seen from the records admittedly the commissioners report was filed in the year 2015 i.e. even before trial. Knowing well the commissioners report the plaint did not come forward with the prayer for amendment but on the other hand he has proceeded with the trial of suit by examining witnesses and also cross examining the defendant. Normally the delay will not be a ground to deny the amendment. But in the present case the amendment application filed to go away from the admissions made in the plaint and as well as in the evidence. The attempt of the petitioner to modify the extent of property based upon the commissioners report is a clear case of attempting to withdraw the admission.

6. The Commissioners report was filed even before trial and the petitioner has proceeded with the suit by examining the witness and the case was at the stage of arguments. The judgment relied above by the respondent is similar to the case present case and by



the amendment the plaintiff is attempting to introduce a new case contrary to the plaint since the amendment of extent and as well as the boundary is about to be modified, after evidence. The Court below has also rightly pointed out the present the boundary mentioned as channel when admittedly as per the report of advocate Commissioner in between the property mentioned in plaint and the amendment application there is a poramboke land and it clearly shows the petitioner has not come forward with clean hands.

7.The judgment relied upon by the learned counsel for the petitioner regarding amendment of plaint about the description of property is not applicable to the present case and the same cannot be applied to the present case since it is not the case of mistake but an attempt to introduce new case. The Trial Court has rightly found that the present boundary including the poramboke land is not correct and the petition has been filed after examination of witness and he proposed amendment will introduce a new case contrary to the plaint, which is not permissible after commencement of trial and the same is not warranting any interference by this Court. Therefore, this Civil Revision Petition is liable to be dismissed.

8.In the result, this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.677 of 2017 in O.S.No.193 of 2013 dated 26.02.2018, on the file of the learned Principal District Munsif Court, Padmanabapuram. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Padmanabapuram.

+1cc to Mr.D.Nallathambi, Advocate, SR.No.66857.

+1cc to Mr.K.P.Narayanakumar, Advocate, SR.No.66904.

order made in
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VSV

RAM/SV MMS/SAR 1/11.06.2018/3P/4C

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