



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP(MD)No.790 of 2018 (PD)
and
CMP(MD) No.3505 of 2018

H.Palavasamuthu

... Petitioner/Petitioner/Plaintiff

Vs.

1.W.Jayam
2.K.Nainar
3.M.Sudalai Muthu
A.Ranjitham Ammal (died)
4.M.Abubaker Maraikayar
5.N.Kaarunya
6.V.Thangathai
7.S.Chellakili
8.A.Bagyathai
9.A.Palraj
10.A.Duraipandi
11.A.Kovairaj

... Respondents/Respondents/Defendants

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 07.03.2018 in I.A No.526 of 2017 in O.S No.3 of 2008 on the file of the Additional District Munsif Court, Vallioor, Tirunelveli District.

For Petitioner : Mr.V.Balasubramanian
For Respondents : Mr.H.Arumugam for R1
R2 & R3 died
R4 - returned with not known
R5 & 6 - Tapal due
R7 - No appearance
R8 to R11 - Left

ORDER

The plaintiff in O.S No.3 of 2018 on the file of the Additional District Munsif Court, Valliyoor is the revision petitioner herein. It is a suit for declaration and permanent injunction. After the trial commenced when the defendant was in the witness box, the plaintiff filed I.A No.526 of 2017 for amending the suit schedule. The court below dismissed the same by order dated 07.03.2018. The correctness of the said order is



questioned in this civil revision petition.

2.The learned counsel appearing for the revision petitioner apart from reiterating the grounds set out in the memorandum of grounds, also drew the attention of this Court to the decision of the Madras High Court reported in 2015-2-L.W 253 (Vijayalakshmi v. Sadagopan & another). This Court had held that amendment for incorporating the prayer for declaration even at the time of cross examination can be allowed. In the present case, what is sought to be amended is the suit schedule itself and new survey numbers are sought to be added and four boundaries description is also sought to be incorporated.

3.As rightly pointed out by the court below as well as the learned counsel appearing for the respondents, the Hon'ble Supreme Court in the decision reported in 2016 (1) CTC 118 (Ram Niranjana Kajaria vs. Jugal Kishore Kajaria) had held that admission made in the pleadings cannot be allowed to be withdrawn by way of an amendment. In the present case, the court below has rightly declined to permit the plaintiff to amend the plaint. The suit is of the year 2008. The amendment application was taken out in the year 2017. Now, the trial has also substantially progressed.

4.This Court is of the view that there is no justification for the gross delay in taking out the amendment application. In view of the addition of new survey numbers as well as the four boundaries description, the character of the suit is also likely to be altered. The order passed by the court below does not call for any interference. This civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Additional District Munsif,
Vallioor, Tirunelveli District.

+ 1 CC TO Mr.V.BALASUBRAMANIAN, ADVOCATE IN SR No. 84101
+ 1 CC TO Mr.H.ARUMUGAM, ADVOCATE IN SR No. 84546

SKM

VB/PM/SAR-2 : 24/10/2018 : 2P/4C