



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.09.2018

DELIVERED ON : 04.10.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1051 of 2015

Saravanan .. Petitioner/Petitioner/Plaintiff
Vs.
1.Thangavel
2.Maniclass .. Respondents/Respondents/Defendants

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to call for the records of the learned District Munsif, Pudukkottai, made in I.A.No.1245 of 2014 in O.S.No.123 of 2013 and set aside the fair and decreetal order dated 08.04.2015.

For Petitioner : Mr.D.Rameshkumar
For Respondent No.1 : No Appearance
For respondent No.2 : Mr.S.Muthal Raj

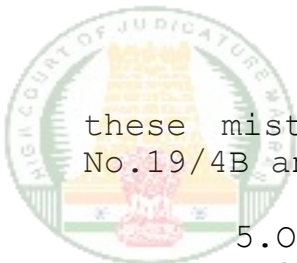
ORDER

Heard Mr.D.Rameshkumar, learned counsel appearing for the petitioner and Mr.S.Muthal Raj, learned counsel appearing for the second respondent.

2.This petition has been filed to set aside the order dated 08.04.2015 passed in in I.A.No.1245 of 2014 in O.S.No.123 of 2013 on the file of the learned District Munsif, Pudukkottai.

3.The petitioner is the plaintiff in the suit and he filed the suit for a prayer of specific performance and for declaration that the sale deed dated 25.07.2012 is null and void. The petitioner filed a petition in I.A.No.1245 of 2014 for a prayer of amendment and the same was dismissed by the trial Court. Against the order of dismissal, the petitioner has filed the present petition.

4.On the side of the petitioner, it is stated that the petitioner entered into a sale agreement with the first respondent on 02.03.1994 and in the sale agreement instead of Survey Nos.19/2A and 19/4B by mistake Survey Nos.19/4B and 19/4C is stated. It is further stated that Survey No.19/4C belonged to the petitioner through the settlement deed executed by the grandfather of the petitioner. It is stated that the petitioner came to know about



these mistake only in the year 2013 and in the plaint, Survey No.19/4B and 19/4C is stated by mistake.

5. On the side of the respondents, it is stated that the property belonged to the first respondent. The second respondent purchased 52 cents in Survey No.19/2A. The petitioner with the help of one Muthusamy and one Lakshmanan tried to create forged documents with the motive to grab the property. A complaint was given and a notice was sent by the petitioner with Survey No.19/9 and then the petitioner sent another notice to make a correction in Survey No.19/A. So far the petitioner has not come with a clear Survey Number. The case is ready for trial. The petitioner has stated in the plaint as Survey No.19/A with a total extent of 12 acres and 75 cents and new Survey No.19/2A AND 19/4B with four boundaries. All the four boundaries are not clearly stated. There is difference between the aforesaid four boundaries and the four boundaries mentioned in the plaint in the sale deed of the second respondent. This amendment will change the entire character of the case. The petitioner has stated that he has purchased the suit property from the first respondent on 29.06.1994 and in that sale deed no boundaries are stated and only Survey No.19/4B 0.06.0 acres 15 cents and in Survey No.19/4C 0.10.0 acres and 25 cents is stated. No document is filed by the petitioner to prove the correct boundary and Survey number of the land and the petition is to be dismissed.

6. On the side of the petitioner, it is stated that nature of the case will not be changed by amending the plaint and to avoid multiplicity of the proceedings, this petition is to be allowed.

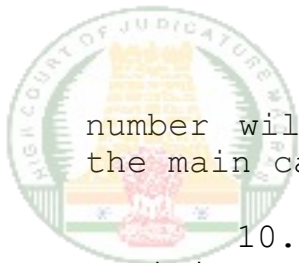
7. The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of Ragu Thilak D. John v. S. Rayappan and others reported in (2001) 2 Supreme Court Case 472, which reads as follows:

"Amendment of plaint-change in nature of suit-that amendment sought would change the nature of the suit originally filed, held, was not a reason for refusing application for amendment-dominant purpose of Order 6 Rule 17 was to minimise litigation-Appellant plaintiff filing suit against the respondents for permanent injunction restraining them from demolishing his compound wall."

8. The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of S. Selvam and another v. Madanlan Chawla reported in 2015 (1) MWN (Civil) 777, which reads as follows:

"If amendment sought is necessary to determine real controversy between parties, such amendments can be sought at any stage of proceedings."

9. On the side of the respondent, it is stated that Survey No. 19/4B and 19/4C boundaries are different. No document is filed to show that the correct survey number and four boundaries. Changing the survey



number will change the identity of the property, thereby changing the main case itself.

10. Records perused. A perusal of the records reveals that the petitioner want to make amendment with regard to the suit schedule of property. Instead of Survey No.19/4, the petitioner want to amend Survey No.19/2A and 19/4B. A perusal of the plaint reveals that already survey No.19/4B is stated in the plaint itself. Instead of Survey No.19/4C, the petitioner now want to incorporate survey No.19/2A. Except this all other boundaries are the same. But the amendments is not clear as to the extent of land in each survey No. and the boundaries for each survey no. Hence, the order passed by the lower Court is to be set aside and the petitioner is permitted to file a fresh petition incorporating the correct survey no and the extent of land in each survey number and the boundaries for each survey number within a period of one month from the date of receipt of copy of this order.

11. With the above direction, this Civil Revision Petition is partly allowed. No Costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-I)

Mrn

To

1. The District Munsif, Pudukkottai.

Copy to

The Section Officer, (2 copies)
V.R. section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.Ramesh Kumar, Advocate in SR No.88679

+1cc to Mr.NA.Palaniyandi, Advocate in SR No.88646

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NM/SV/SAR I/30.10.18/3P/6C.

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