



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.11.2017

DELIVERED ON : 28.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.1560 of 2017

and

C.M.P. (MD) No.8680 of 2017

T.Kasammal : Petitioner / Petitioner / Plaintiff

Vs.

1.Seeniammal

2.Ramasamy

Ganasekaran (late)

3.R.Jeyaram

4.P.Paneer Selvam

5.P.Murugesan

Bose Thevar (late)

Thangaraj (late)

S.Pandi (late)

6.S.Kannan

7.Tharmaraj

8.P.Marimanavalan

9.T.Jeyaraman

10.T.Jeyaraj

11.P.Muthupandi

12.P.Rajapandi

13.Vasantha

14.Guhan @ Aangan : Respondents / Respondents / Defendants

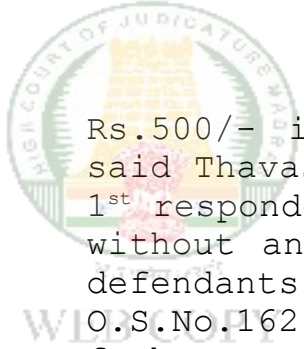
PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair Order and Decretal Order dated 16.03.2017, passed I.A.No.467/2016 in I.A.No.307 of 2014 in O.S.No.162 of 2010, on the file of the learned District Munsif, Theni.

For Petitioner : Ms.Porkodi Karnan

For respondents : No appearance

ORDER

This civil revision petition has been filed as against the order rejecting the amendment petition filed by the revision petitioner / plaintiff seeking to amend the averments in I.A.No.307 of 2014 and in the plaint.



Rs.500/- in favour of one Thavasi Thevar and on 05.03.1958 the said Thavasi Thevar, had made over the lease deed in favour of the 1st respondent / 1st defendant and the 1st respondent / 1st defendant, without any valid title, sold the suit property in favour of the defendants 3 to 11 and therefore, she has filed the suit in O.S.No.162 of 2010 for redemption of the mortgage executed by her father - Mayathevar in favour of one Thavasi Thevar and the subsequent made over of the same in favour of the 1st defendant, and for recovery of possession and also for declaration of the sale deed executed by the defendants 3 to 11 in respect of the suit properties as null and void. The respondents / defendants remained *ex parte*. While so, seeking to delete certain averments and substitute the petition mentioned averments in certain paragraphs of the plaint, the revision petitioner / plaintiff has filed I.A.No.307 of 2014 and the same was allowed by the trial Court. Subsequently, the revision petitioner / plaintiff has filed I.A.No.467 of 2016 seeking to amend the averments mentioned in I.A.No.307 of 2014 and also in the plaint. The Court below has dismissed the same holding that the facts stated in the plaint and in the application of amendment are contradictory to each other and the documents have already been marked by examining the petitioner / plaintiff and at this stage, the amendment of plaint sought for by the revision petitioner / plaintiff cannot be granted. Aggrieved by the same, the revision petitioner / plaintiff has filed this civil revision petition.

3. The learned counsel for the revision petitioner/ plaintiff would submit that due to inadvertence, the petitioner / plaintiff has failed to mention about Ex.A2 in the schedule of plaint and also the fact about the share of the vendor of his father with regard to the said items of properties were not properly described neither in the original plaint nor in the amended plaint and that without describing the same, the petitioner / plaintiff will not be able to satisfy the Court with regard to her right in the suit properties and therefore, she has filed the said application seeking amendment. By relying on the decision of a learned Single Judge of this Court in Padma Vadivel Murugan Vs. Gomathi Kathiresan and others, reported in 2010 L.W. 668, she would further submit that no prejudice would be caused to the respondents / defendants in allowing this petition and as the respondents / defendants remain in *ex parte*, the Court below could have allowed the said application. But, the Court below has erroneously dismissed the said application and therefore, this Court may set aside the order passed by the Court below and permit the petitioner to amend the plaint by allowing this civil revision petition.

4. Heard the learned counsel for the petitioner / plaintiff and perused the records carefully.



5. Admittedly, after the examination of the petitioner / plaintiff as PW1 and marking of documents Exs.A1 to A9, the petitioner / plaintiff had filed I.A.No.307 of 2014 seeking to amend the plaint and the same was allowed by the Court below. While so, the petitioner / plaintiff filed the present interlocutory application seeking to amend certain averments mentioned in I.A.No.307 of 2014 and also in the plaint and also to include the relief of declaration. According to the petitioner / plaintiff, his counsel without understanding the case properly has made some omission, deletion and correction, and without reading the same, he had put his signature in the plaint and also in the amendment petition and therefore, he has filed the present petition.

6. The averments in the plaint / petition / written statement should be averred giving clear picture to the case. However, under Order 6 Rule 17 of the Code of Civil Procedure, the Court, at any stage of the proceedings, may allow either party to amend the pleadings and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties and it shall not cause injustice to the other side.

7. In this case, the suit was filed in the year 2010. Subsequently, the plaint was amended as per the request of the petitioner / plaintiff in the year 2014 and again, it was sought to be amended by I.A.No.467 of 2016. A perusal of the petition filed in I.A.Nos.307 of 2014 and 467 of 2016 would go to show that the averments sought to be amended are mutually contradictory and the same would change the character of the suit. Though the respondents remained *ex parte*, the petitioner / plaintiff could not make out his case properly. Merely because the respondent remained *ex parte*, it cannot be claimed that the relief sought for is to be granted. The Court below has held that after the examination of the witnesses and marking of the documents, it would not be proper in allowing this petition. This Court does not find any reason to interfere with the order passed by the Court below.

8. In view of the above, this civil revision petition is dismissed at the stage of admission itself. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/True copy/



To

The District Munsif,
Theni.

+1 CC TO M/S Polax Legal Solutions IN SR No.64781

gcg

KK/RSK/SAR 3/18/05/2018/4P/3C

C.R.P. (PD) (MD) No.1560 of 2017

28.04.2018