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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) No.2055 of 2017

and

C.M.P. (MD) .No.10217 of 2017

Akathammal

.. Petitioner/Plaintiff/Petitioner

vs.

1.Thanka Bai

2.Sekhar

3.Sasidharan

4. Rajamoni

5.P.Subala Mary

..Respondents/Defendants/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.07.2017 made in I.A.NO.626 of 2016 in O.S.No.246 of 2011, on the file of the learned Principal District Munsif, Padmanabhapuram.

For Petitioners : Mr.K.N.Thampi

For Respondent No.3 : Mr. K.P.Narayanakumar

Respondents 1,2,4 & 5 : Exparte

ORDER

The revision petitioner is the plaintiff in O.S.No.246 of 2011 on the file of the learned Principal District Munsif, Padmanabhapuram. The suit is for declaration and permanent injunction and demarcation. The plaintiff filed I.A.No.626 of 2016 for amendment. The said application was dismissed by order, dated 04.07.2018. The correctness of the said order is questioned in this civil revision petition.

2. Heard the learned counsel appearing on either side.

3. The learned counsel for the third respondent placing reliance of the unreported decision, dated 07.04.2015 in C.R.P. (MD).No.1808 of 2013, contended that the plaintiff having come out with a specific case on the strength of certain documents, cannot seek to amend the plaint based on the Advocate Commissioner's report. No doubt the said unreported decision is squarely in favour of the respondent.

4. But then, the learned counsel for the petitioner placing reliance on the decision of the Hon'ble Division Bench reported in **2013 (1) MW1 (Cv1) 285** pointed out that such amendment



based on the Advocate Commissioner's report is very much maintainable.

5. I am in agreement in the said submission of the learned counsel for the petitioner.

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6. The learned counsel for the petitioner also further pointed out that there is one another decision reported in **2006 (4) LW 817**. It is also on the same lines. Paragraph Nos.5 & 6 in the said decision read as under:

"5. In the plaint itself it was specifically stated by the revision petitioner that the measurements of the property were not given exactly and the same would be amended if the report of the Advocate Commissioner reveals difference in the measurements. Therefore, the learned counsel for the petitioner is right in contending that the proposed amendment was not something new which would alter the nature and character of the suit. The trial Court rejected the prayer on the ground of delay as the amendment was filed after two years from the date of the submission fo the report by the Advocate Commissioner.

6. When the proposed amendment does not alter the nature and character of the suit to bring in a new cause of action, the courts ought to be liberal in granting the prayer for amendment for effective adjudication. Further, it would also avoid multiplicity of proceedings."

7. It is also to be noted that the trial in this case is yet to commence. The applications for pre-trial amendment have to be considered liberally. Therefore, this Court is of the view that the order in question deserves to be set aside and accordingly, the same is hereby set aside.

8. This Civil Revision Petition stands allowed accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-I)



To

The Principal District Munsif,
Padmanabhapuram.

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Copy to

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

+1cc to Mr.K.N.Thampi, Advocate Sr.No.80886

+1cc to Mr.K.P.Narayanakumar, Advocate Sr.No.81432

PJL

VB/RP/SAR1/01.10.2018/3P/6C

C.R.P. (MD) No.2055 of 2017
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