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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.09.2018
CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (PD) (MD) .No.2167 of 2017

and

C.M.P. (MD) No.10843 of 2017

M.Abdul Salam

... Petitioner/Petitioner

Vs.

1. B.B.Sahul Hameed
Divan Beevi (Dead)
2. Mariyam Beevi
3. Mohammed Ismail
Abdul Kadar (Dead)
Ismail Moideen (Dead)

4. Sahul Hameed
5. Mohammed Ismail
6. Dhivan Meeral
7. Nabishaal
8. Shajahan
9. Rahamathulla
10. Sherif
11. Sheeba
12. S.Abdul Kadar

... Respondents/Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.10.2017 and 04.10.2017 in I.A.No.413 of 2017 in O.S.No.637 of 2006 on the file of the learned Additional District Munsif, Thenkasi and allow this Civil Revision petition.

For Petitioner	: Mr.Niranjan S.Kumar
For R-1 to R-3	: Mr.M.P.Senthil
R-5, R-6 & R-12	: No appearance.
For R-4	: Batta due.
For 7 & R-11	: Left.
For R-8 to R-10	: Left India.

O R D E R

The plaintiff in O.S.No.637 of 2006 on the file of the learned Additional District Munsif, Tenkasi, is the Revision petitioner herein. The said suit has been filed seeking the relief of declaration as well as permanent injunction and mandatory injunction. The suit was originally filed through the Revision petitioner's power agent, namely, wife. The Revision petitioner after revoking the power of attorney given in favour of his wife,



filed I.A.No.413 of 2017 for amending the plaint. The said application was dismissed by order dated 03.10.2017. The said order is under challenge in this Civil Revision petition.

2. Heard the learned counsel on either side.

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3. The learned counsel appearing for the Revision petitioner submitted that he had filed the suit through his wife who was an illiterate. The suit pathway in question is actually the Revision petitioner's absolute property. But it has been erroneously described as a common pathway in the suit prayer as well as in the plaint averments. Therefore, he wants to amend the plaint appropriately.

4. This Court is unable to agree with the said request made by the Revision petitioner's counsel.

5. As rightly pointed out by the learned counsel appearing for the respondents, even in the proof affidavit filed by the Revision petitioner herein, the suit pathway has been described as only a common pathway. Therefore, the Revision petitioner is not justified in blaming his wife. He also pointed out that the admission once made cannot be allowed to be withdrawn in the guise of amendment of pleadings. Therefore, the Court below rightly dismissed the said application filed by the Revision petitioner herein.

6. There is no merit in the Civil Revision petition. The Civil Revision petition stands dismissed, accordingly.

7. At this stage, the learned counsel appearing for the Revision petitioner submits that he may be permitted to withdraw the suit itself and file a fresh suit on the same cause of action.

8. The Revision petitioner is of course at liberty to file such an application under Order 23 Rule 1 of C.P.C., and if such an application is filed, the same shall be disposed of in accordance with law. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

<https://hcservices.ecourts.gov.in/hcservices/>

1. The Additional District Munsif,
Tenkasi.



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

+1cc to Mr.M.P.Senthil, Advocate Sr.No.84461

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