

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON: 25.01.2018

PRONOUNCED ON: 28.03.2018

WEB COPY

CORAM:**THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.R.P. (MD) .No.2461 of 2017 (PD)****AND****C.M.P. (MD) .No.11691 of 2017**

The Pentecostal Evangelical Trust,
through its President,
Rayappan ... Petitioner / Petitioner / Plaintiff

Vs.

1.Nar Sesammal

2.Thiraviyam ... Respondents / Respondents / Defendants

Prayer: Petition is filed under Article 227 of the Constitution of India, praying to call for the records relating to the order passed in I.A.No.460 of 2017 in O.S.No.256 of 2009, on the file of the learned Additional District Munsif, Nanguneri, and set aside the order dated 08.06.2017 passed in I.A.No.460 of 2017 and allow the I.A.

For Petitioner : Mr.C.Dhanaseelan

For 1st respondent : Mr.C.K.M.AppajiFor 2nd respondent : Mr.R.Balakrishnan**ORDER**

The revision petitioner is the plaintiff and the respondents are the defendants. The revision petitioner / plaintiff filed the suit in O.S.No.256 of 2009 for declaration that the suit item Nos.1 and 2 are the absolute properties of the plaintiff and for permanent injunction restraining the respondents / defendants from interfering with their peaceful possession and enjoyment of the suit properties. In the year 2017, the revision petitioner / plaintiff had filed an interlocutory application in I.A.No.460 of 2017 in O.S.No.256 of 2009 seeking to amend plaint by adding one



more property, which was omitted to be mentioned in the suit schedule properties. After hearing both sides, the said application was dismissed by the trial Court holding that the revision petitioner / plaintiff has produced only a latest document in respect of the property, which sought to be included and that if the said application is allowed, that will change the nature of the suit. Challenging the said order, the revision petitioner / plaintiff has filed the present civil revision petition.

2. The learned counsel appearing for the revision petitioner / plaintiff would submit that the revision petitioner / plaintiff claimed title in respect of the existing suit schedule property as well as the property sought to be included only on the basis of the sale deed, dated 14.12.1995, which has already been marked as document No.4 in the plaint and the omission of the property, which sought to be included in the plaint schedule property, came to be noticed only when the commissioner visited the property and hence, immediately, before the advocate commissioner's report, the said application has been filed seeking to amend the plaint. He would further submit that as the revision petitioner's claim is based on the very same sale deed, dated 14.12.1995, which has been marked as document No.4 in the plaint and as the property, which sought to be included, is only a subsequent sub-division made in the suit property, the nature of the suit will not be affected by inclusion of the said property. Thus, he prayed to set aside the order impugned in this petition and to allow the application for amendment.

3. The learned counsel appearing for the respondents in unison submitted that the suit has been filed in the year 2009 and after commencement of the trial, the revision petitioner / plaintiff has filed the amendment petition in the year 2017 and therefore, the same cannot be accepted. He would further submit that after perusing the records, the trial Court has rightly held that the property, which sought to be included, has not been mentioned in the sale deed, dated 14.12.1995 and in Patta No.920, and that except the computer patta, dated 17.03.2017, there is no document produced by the revision petitioner / plaintiff in respect of the property, which sought to be included. He would further submit that as held by the Court below, if the said property is included, the same will change the nature of the suit. Thus, they prayed for dismissal of this civil revision petition.

4. Heard the learned counsel appearing for both sides and perused the materials available on record.

5. The suit is of the year 2009. After commencement of the trial, in the year 2017, the revision petitioner / plaintiff had filed an interlocutory application in I.A.No.460 of 2017 in O.S.No.256 of 2009 seeking to amend plaint by adding one more



property, which was omitted to be mentioned in the suit schedule properties. According to the revision petitioner / plaintiff, he has purchased the property by way of very same sale deed dated 14.12.1995, which has been marked as plaint document No.4 and he has been enjoying the same independently and the same has to be included in the plaint schedule properties. The revision petitioner / plaintiff does not assign any reason for his omission to mention the same in the plaint schedule properties, even though he has stated that he has been in possession and enjoyment of the said property from the date of purchase. It is seen that the property, which sought to be included, has not been purchased under the sale deed dated 14.12.1995. In document No.5 viz., Patta No.225, also there is no mention about the said property. In the computer patta No.920, which stated to be obtained by the revision petitioner / plaintiff only on 17.03.2017, it is mentioned that the property which omitted to be mentioned, stands in the name of the plaintiff and one Mariyadass.

6. It is contended by the learned counsel for the revision petitioner / plaintiff that the other name found in the said patta is that of a member of the previous owners' family, who has no right at present in the said property and that would be proved during trial. This Court is not inclined to accept the said contention, because the documents produced are bereft of particulars and without any *prima facie* documents, under presumption and assumption, the Court cannot grant the relief sought for the revision petitioner, that too after the commencement of trial. This Court is also of the view that if the relief sought for by the revision petitioner / plaintiff is granted, the same would change the nature of the suit. The Court below has rightly dismissed the said petition. This Court does not find any valid reason to interfere with the order passed by the Court below.

7. In view of the above, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

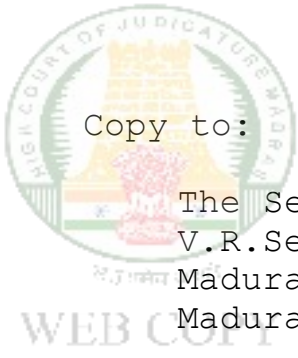
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Munsif,



Copy to:

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

- + 1 cc TO Mr.C.K.M..Appaji , Advocate in SR No. 58617
- + 1 cc TO Mr.C.Dhanaseelan , Advocate in SR No. 58873
- + 1 cc TO Mr.R.Balakrishnan , Advocate in SR No. 59586

gcg

AE/JC/SAR3/13.04.2018/4P/7C

Order made in
C.R.P. (MD) .No.2461 of 2017 (PD)
28.03.2018