



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.1102 of 2016

and

C.M.P. (MD) .No.5565 of 2016

S.Liyakath Ali

... Petitioner/Petitioner/Plaintiff
/Vs./

1.Chinnappar

2.Murugalakshmi

... Respondents/Respondents/
Defendants

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 06.11.2015 passed in I.A.No.244 of 2015 in O.S.No.27 of 2012, on the file of the District Munsif, Sattur, by allowing this Civil Revision Petition.

For Petitioner : Mrs.P.Jessi Jeeva Priya
for Mr.G.Aravinthan
For Respondents: Mr.V.Sitharanjandas

ORDER

The plaintiff in O.S.No.27 of 2012 on the file of the District Munsif Court, Sattur, is the revision petitioner herein. The suit was filed for declaration and recovery of possession in respect of 2nd schedule property. The 2nd schedule property was originally described as part of the first schedule property. Advocate commissioner was appointed and report has been filed. It emerged thereafter that the recovery has to be sought in respect of the entire first schedule property. Therefore, the second schedule is now sought to be deleted and the relief is sought to be in respect of the entire schedule property. Hence, I.A.No.244 of 2015 was filed. The court below by order, dated 06.11.2015 dismissed the same. The Court below has observed that the details are absent. The survey number has not been mentioned. The date as to when the defendant is said to have committed encroachment and put up construction has not been mentioned. Therefore, the court below took the view that the character of the suit will be altered.

2.The learned counsel appearing for the respondent submitted that the reasons assigned with the court below are definitely justified and there is no merit in the Civil Revision



Petition.

3. I am of the view that this being a suit for declaration and recovery of possession and the amendment application having been filed before the commencement of the trial, liberal approach is warranted. In fact the petitioner herein is not introducing a new case or altering the character of the suit. Originally in the plaint there were two schedules, Schedule I and schedule II. Schedule II formed part of the first schedule of the plaint. The plaintiff proceeded on the premise that encroachment has been committed only in respect of the II schedule. After the report of the Advocate commissioner was submitted, he realised that the entire first schedule has been encroached upon. Therefore, he wanted to enlarge the scope of the relief. But, it is well within the original pleadings. In this view of the matter, the order impugned in the Civil Revision Petition is set aside.

4. The defendants are at liberty to file Additional Written Statement and it is open to them to take every plea available to them.

5. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The District Munsif, Sattur.

+1 CC To MR.V.SITHARANJANDAS, Advocate SR. NO.81581

+1 CC To MR.P.JESSI JEEVA PRIYA, Advocate SR. NO. 81708

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