

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 25.11.2019

Orders Pronounced on : 04.12.2019

CORAM

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

CRP.PD.Nos.3225 & 3226 of 2013 and
M.P.Nos.1 & 1 of 2013

1.Palani
2.Arumugam
3.Elumalai

...Petitioners in both CRP's

Vs.

Krishnamurthy

...Respondent in both CRP's

PRAYER in CRP.PD.No.3225 of 2013:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.02.2013 passed in I.A.No.1666 of 2012 in O.S.No.32 of 2008 on the file of the learned District Munsif, Chengalpet.

PRAYER in CRP.PD.No.3226 of 2013:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.02.2013 passed in I.A.No.1111 of 2012 in O.S.No.33 of 2008 on the file of the learned District Munsif, Chengalpet.

For Petitioners : Mr.S.Balasubramanian
in both CRP's
For Respondent : Mr.R.Siddharth
in both CRP's

ORDER:

The brief facts necessitated for disposal of these Civil Revision Petitions are as under:

2.The petitioners are the defendants in O.S.No.32 of 2008 and O.S.No.33 of 2008 on the file of the learned District Munsif, Chengalpet. The respondent herein filed the above referred suits as against the revision petitioners and seeking the relief of permanent injunction restraining the petitioners in interfering with his peaceful possession and enjoyment of the suit property. After commencing the trial, the petitioners filed I.A.No.1111 of 2012 in O.S.No.33 of 2008 and I.A.No.1666 of 2012 in O.S.No.32 of 2008 to amend the description of suit property by substituting the boundaries which is not shown at the time of filing of suits for permanent injunction. After affording an opportunity to the revision petitioners, the court below allowed those applications filed for amendment. Aggrieved over the order passed by the court below, the petitioners are before this Court challenging the same as the same have been passed against the principles of law.

3.The contention of the petitioner / plaintiff before the trial court is that he has not given the boundaries of the suit property at the time of filing the suits and that unless the petitioner is permitted to amend the description of schedule property by giving boundaries he will be prejudiced.

4.Per contra, the respondents / defendants before the trial court resisted the petition on the ground that PW1 was examined and at this stage amendment cannot be permitted.

5.Upon considering the arguments advanced by the counsel appearing on either side, it is not in dispute that in the sale deed stands in favour of respondent which was executed at the time of purchasing the suit property, four boundaries of the property purchased are not mentioned. At the time of filing the suits, only by mentioning the schedule of property as stated in the sale deed, the respondent herein filed the suit and now only by way of filing those applications he wanted to amend the schedule of property by incorporating the boundaries. Now arguments advanced by the learned counsel appearing for the petitioners is, after commencing

of trial the amendment cannot be entertained. In this regard, it is necessary to see the prayer sought by the respondent in these Civil Revision Petitions. Since the suits are filed for the relief of permanent injunction, he necessitated to show specific boundaries, in which he is in lawful possession. Mere mentioning the survey number and extent do not confer any particular location, in which the petitioner is in the possession.

6. Order 6 Rule 17 of Code of Civil Procedure is clear that the the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. So it cannot be said that the amendment should not be allowed after commencing of trial. In this regard, principle has been laid down by the Hon'ble Apex Court in the case of **Thiraviyam Vs. Mukkayee** reported in **2010(1) MWN (Civil) 822**, wherein this Court has held as follows:

"5. It is laid down by the Honourable Supreme Court in the case of Usha Devi Vs. Rijwan Ahamd and

others [2008-3-MLJ-287-SC] that in order to allow the prayer for amendment, the merit of the amendment is hardly a relevant consideration and it will be open to the defendants to raise their objections in regard to the amended plaint by making any corresponding amendments in their written statement."

7. On perusal of the orders passed by the trial court shows that the amendment is only with regard to substitution of boundaries of the suit property and there is no dispute only for the purpose of identifying the property. Merely because of the boundaries are not been given at the relevant time and subsequently the same were substituted by way of amendment, it cannot be contended that the amendment would amount to change the character of the suits. Due to the amendment, the petitioner is not introducing new case and also the same has not created different cause of action. More than that, no prejudice will be caused to the petitioners / defendants.

8. In this regard, it would be relevant to look into some of the decisions of this Court as follows:

M.Kulasekaran and other vs M.Dhanapathy

reported in 2017-4-L.W.382 - Amendment to correct Survey Numbers and boundaries will not affect the character of the suit or would amount to introduction of a new cause of action.

Kandasamy & Others Vs Thiagarajan & others reported in 2015-5-L.W.783- Amendment to correct Survey Numbers and boundaries will not affect the character of the suit or would amount to introduction of a new cause of action and a post trial amendment can be allowed if out of due diligence the plaintiff is not in a position to seek the amendment prior to commencing of trial .

9. Therefore, already this issue was decided as above by this Court, and the interference of this Court is not necessary in the impugned orders passed by the court below. Accordingly, I am of the considered view that there is no material irregularity found in the impugned orders passed by the court below.

10. In the light of the above discussions, these Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

WEB COPY

04.12.2019

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

lok

To
The learned District Munsif,
Chengalpet.



WEB COPY

R.PONGIAPPAN,J.

lok



Pre Delivery order made in
CRP.PD.Nos.3225 & 3226 of 2013 and
M.P.Nos.1 & 1 of 2013

WEB COPY

04.12.2019