

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4311 of 2014
and
M.P.No.1 of 2014

T.Rajangam

Petitioner

Vs

C.L.Gopinath

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 02.09.2014 made in I.A.No.122 of 2014 in A.S.No.31 of 2014, on the file of Principal Subordinate Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondent : Ms.P.T.Ramadevi
Mr.A.Sundaravadhanan

ORDER

The Civil Revision Petition has been preferred against the order passed in I.A.No.122 of 2014 in A.S.No.31 of 2014, on the file of learned Principal Subordinate Judge, Erode.

2. In an earlier occasion, the respondent in this Civil Revision Petition namely C.L.Gopinath filed a suit in O.S.No.678 of 2010, on the file of learned Munsif, Erode as against this Civil Revision Petitioner, and seeks relief of permanent injunction restraining the defendant, his men and agents from trespassing into the suit "A" properties or interfering in any other manner with the plaintiff's peaceful possession and enjoyment of the suit "A" schedule properties.

3. The learned District Munsif, Erode in a Judgment and decree dated 30.09.2013, dismissed the Suit and as against the said judgment and decree, the respondent/plaintiff has filed an appeal in AS.No.31 of 2014, and prayed for allowing the Appeal in favour of him.

4. Pending disposal of the appeal, the respondent/plaintiff has filed an application in IA.No.122 of 2014 under Order 6 Rule 17, seeking the relief to amend the plaint. The amendment sought for in the said I.A.No.122 of 2014 is that the respondent/plaintiff had purchased 1.38 acres in item II of suit A schedule properties under a registered Sale Deed dated 04.02.2000 and by mistake, it was mentioned as 1.00 acre. After affording opportunity to the petitioner herein, the learned Principal Subordinate Judge, Erode in an order dated 02.09.2014 allowed the application filed by the respondent/plaintiff and permitted him to amend the plaint accordingly.

5. Aggrieved over the same, the plaintiff/respondent is before this court and prayed to set aside the order passed in I.A.No.122 of 2014, by the Principal Subordinate Judge, Erode.

6. The learned counsel appearing for the petitioner/defendant submitted that by way of filing an application under Order 6 Rule 17, the respondent/ plaintiff attempted to introduce a new case without considering the preposition of law, the learned Principal Subordinate Judge allowed the application, thereby the order passed on 02.09.2014 by the Principal Subordinate Judge is liable to be dismissed.

7. On the other hand, the learned counsel appearing for the respondent/plaintiff would specifically contend in the affidavit filed by the plaintiff before the Appellate Court, it was mentioned that only by mistake, the extent of suit property was mentioned in the plaint as 1.00 acre instead of 1.38 acres. He would further added that because of the amendment sought for in the plaint, the petitioner/ defendant is no way prejudiced.

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8. Upon hearing the arguments advanced on either side, the learned Principal Subordinate Judge, while at the time of disposing IA. No.122 of 2014, has held that for proper adjudication, the amendment sought for by the respondent / plaintiff is very much necessary. Further, he has held that in the proposed amendment, he is not attempted to

introduce a new case or does not alter the nature or character of the suit. Moreover, he has specifically stated only in order to advance substantial justice, the application filed by the respondent/plaintiff has to be necessarily allowed and the same was allowed on payment of cost of Rs.1,000/- to the respondent before a stipulated time.

9. At this juncture, a perusal of the affidavit filed before the first Appellate Court is necessary and a perusal thereof would go to show that the respondent/defendant has stated only by mistake, the extent of property has not been clearly narrated in the description of property. In this connection, it is relevant to see the Judgment of our Honourable Apex Court reported in 2015 13 SCC 132 (Mahila Ramkali Devi and others Vs Nandram (D) Thr. LRS and others), in which our Honourable Apex Court has held as follows:-

20.It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in paragraph 3 of the original plaint, the High Court ought not to have rejected the application.

22. In the case of Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon, AIR 1969 SC 1267, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

23. In Pandit Ishwardas vs. State of Madhya Pradesh and Ors., AIR 1979 SC 551, this Court observed:-

“We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the Court. There is no legal basis for this assumption. There is no impediment or bar against an appellate Court permitting amendment of the pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the Appellate stage the reason why

it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court.”

10. It is pertinent to note that in the proposed amendment, the plaintiff/respondent has admitted that the extent of property has been mentioned as 1.00 acre instead of 1.38 acres by mistake. Except the said word, he has not stated anything in the proposed amendment. Admittedly, on going through the written statement filed by the petitioner/defendant before the trial Court, it was specifically admitted in paragraph 7 about the purchase made by the plaintiff. Hence, after admitting the purchase made by the plaintiff. Hence, after admitting the purchase made by the plaintiff, it is for the Courts below to verify, whether the plaintiff has purchased the property measuring the extent of 1.38 acres or 1.00 acre and it is purely a question of fact. In otherwise, the learned first Appellate Court does not commit any mistake, while at the time of passing the order in IA.No. 122 of 2014.

11. In view of the above discussions and by applying the said principle followed by our Honourable Apex Court reported in 2015 13 SCC 132 in the case on hand, I am of the considered opinion that no interference is required in the order passed in I.A.No.122 of 2014 in

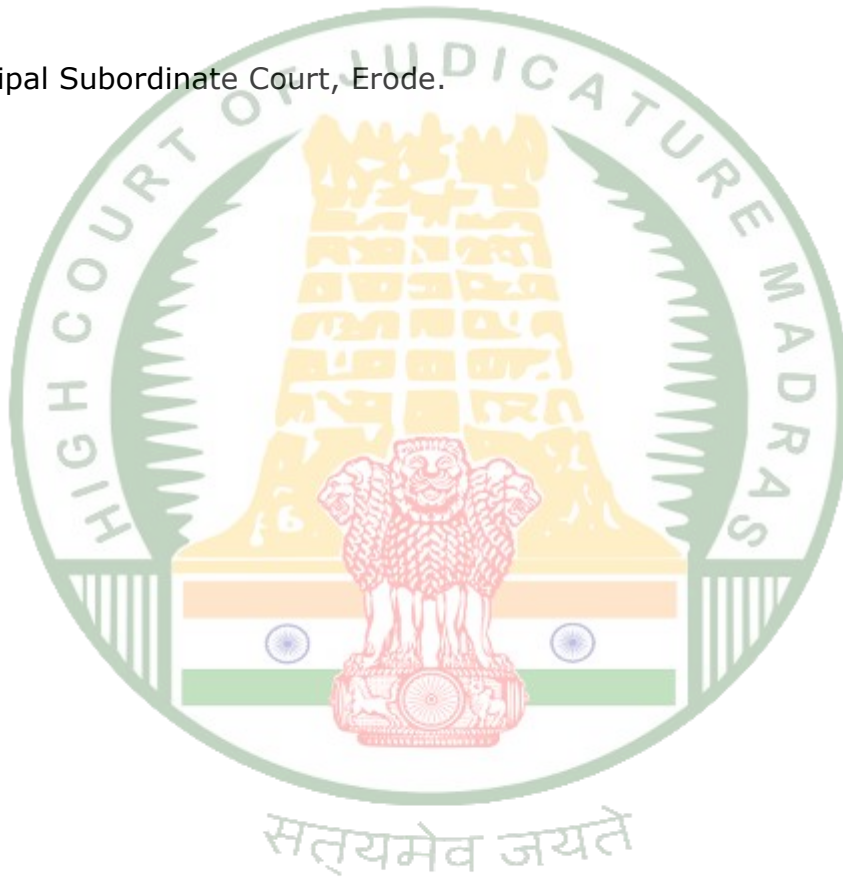
A.S.No.31 of 2014, by the Principal Subordinate Court, Erode and hence the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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03.09.2019

To

The Principal Subordinate Court, Erode.



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R.PONGIAPPAN, J.,

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