



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP (PD) (MD) No.116 of 2018

and

C.M.P. (MD) No.505 of 2018

Velmurugan

... Petitioner/2nd respondent /2nd Defendant

vs.

1.Mohaideen Batcha Khan

... 1st Respondent/petitioner/plaintiff

2.Muthukrishnan

... 2nd Respondent/1st respondent /1st Defendant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.12.2017 made in I.A.No.1167 of 2017 in O.S.No.272 of 2008 on the file of the Additional District Munsif Court, Nanguneri.

For Petitioner : Mr.A.Arumugam
For R1 : No appearance
For R2 : Mr.P.Senthur Pandian

ORDER

This Civil Revision Petition has been filed to set aside the order dated 06.12.2017 passed in I.A.No.1167 of 2017 in O.S.No.272 of 2008 by the learned District Munsif, Nanguneri.

2.Before the trial Court, the petitioner herein is the second defendant, the first respondent herein is the plaintiff and the second respondent is the first defendant. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.I.A.No.1167 of 2017 was filed by the plaintiff by stating that he has filed a suit in O.S.No.272 of 2008 for permanent injunction regarding the suit property, which lies in S.No.718/1. The plaintiff contended that already he has filed an application in I.A.No.474 of 2010 for appointing an Advocate Commissioner to identify the encroachment made by the defendants in the said suit



property. In the said application, one Palanivel Murugan, Advocate, was appointed as Commissioner and he has inspected the said suit property along with the help of Surveyor and after the filing of the report by the Commissioner, the plaintiff came to know that the land, in which, he is claiming right is not in S.No.718/1, whereas, it lies in S.No.703/1C5 and hence, to that extent, the plaintiff wants an amendment to be made in the plaint and the said amendment does not affect the cause of action of the suit.

4.The defendants vehemently objected for such amendment. The defendants contended that the said suit was filed by the plaintiff based on the details furnished in his document and after 10 years of filing the suit, without any document, he has filed this amendment petition. Hence, the said amendment sought by the plaintiff without any document and after a very long delay is not maintainable.

5.After observing the contention raised on either side, the trial Court has passed an order by stating that in the said suit filed by the plaintiff, the four boundaries are given in the description of property and as per the four boundaries, the Survey Number is 703/1C5. Hence, the plaintiff does not seek any change in the boundaries and the said amendment will not alter the cause of action of the case or cause any prejudice to the case of the defendants. Hence, the trial Court allowed the said application, against which, the petitioner herein/second defendant has filed the present Civil Revision Petition.

6.Heard the learned counsel on either side. No representation for the first respondent herein.

7.The petitioner herein/second defendant contended that as per the amendment of the said Survey Number, the character and the cause of action of the suit property got entirely changed. Further, the second defendant contended that the land in S.No.703/1C5 is a private property, which belongs to one Jeer Mutt and the entire case of the plaintiff and the defendants will be very much affected if such amendment is made.

8.On hearing the petitioner herein/second defendant as well as on perusal of records, it is observed that originally the plaintiff filed a suit for permanent injunction against the defendants in the suit property, wherein, the defendants made an encroachment and already, the Advocate Commissioner has inspected the said suit property along with the help of Surveyor and a report of the Commissioner has also been filed. Now, the plaintiff came to know that his right over the property lies in S.No.703/1C5 and not in S.No.718/1. Further, it is observed that the said amendment will not affect the case of the defendants.



9. In view of the above, there is no merit in this Civil Revision Petition and if the petitioner herein is aggrieved with the nature of the property itself, it is for him to take steps with the nature of the property and he has every right to contest the same before the trial Court.

10. This Civil Revision Petition is dismissed accordingly. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

The Additional District Munsif,
Nanguneri.

+1 CC to M/s.P.SENTHUR PANDIAN, Advocate (SR-62253[F] dated 24/04/2019)

MM

CRP (MD) No.116 of 2018
22.04.2019

_KM/ (08.05.2019) 3P 3C