



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (PD) (MD) No.657 of 2019

and

C.M.P. (MD) No.3493 of 2019

Thanapal

... Petitioner /Petitioner /
Defendant

Vs.

S.Chandrasekaran

... Respondent/ Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.498 of 2006 by the learned 1st Additional District Munsif, Nagercoil dated 18.02.2019.

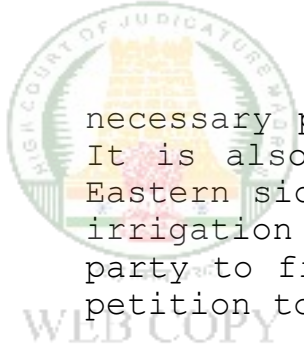
For Petitioner : Mr.K.P.Narayanakumar

O R D E R

This Civil Revision Petition has been preferred against the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.498 of 2006 by the learned 1st Additional District Munsif, Nagercoil, dated 18.02.2019.

2.I.A.No.1 of 2019 is filed by the petitioner herein, who is the defendant in the suit. The petitioner as defendant contended that the plaintiff filed the suit originally for an area of 435.6 sq.feet and the valuation for the said area was stated as Rs.5,000/-. Now the plaintiff has included another 35.5 cents along with 1 cent, hence, proper Court fee has to be paid and based on the said Court fee, the said Court has no jurisdiction to try the suit.

3.The other averment made by the petitioner/defendant is that when the suit itself is only for demarcation and the encroached portion is to the extent of 1.12 cents and the plaintiff has not specifically stated in which part of total extent of 36.5 cents is to be recovered from this defendant. Hence, the defendant has stated that if there is deficiency of the area for the plaintiff, then that has to be accessed by verifying the adjacent owners of the plaint schedule property. Hence, they are



necessary parties to the suit and hence, they should be impleaded. It is also further contended by the petitioner/defendant that the Eastern side of the property is the newly formed road on the bank of irrigation channel and hence, the Government is also a necessary party to find out the actual area. Hence, the petitioner filed the petition to strike the plaint filed by the plaintiff.

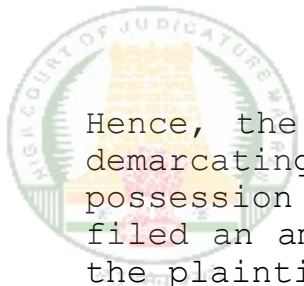
4. For the said petition the respondent in the counter contended that there is valid cause of action and there is no necessity for paying additional Court fee. Further, the petition filed by the plaintiff in C.R.P.(MD)No.2291 of 2016 was allowed by this Court in view of the fact that since already a suit for demarcation and recovery of possession had already been filed, the defendant cannot have any grievance for permitting the plaintiff to add another item of property by adding additional extent of some area and therefore, filed this application for rejecting the plaint.

5. The trial Court on hearing the contention raised by both sides has dismissed the application filed by the defendant. Aggrieved against the said dismissal, the defendant has preferred the Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner.

7. The petitioner contended that the plaintiff has not stated the exact area of demarcating his property in his plaint and there is no cause of action by filing an amendment petition by extending the area to be demarcated and hence, there is no cause of action and further against the original claim made in the plaint, by way of amendment, a larger extent is added for which a proper Court fee is required and hence based on the Court fee as well as cause of action and there was no prayer in the original plaint, the plaint filed by the plaintiff has to be rejected.

8. The petitioner also brought to the notice of this Court the relief sought for by the plaintiff in the plaint, whereas, when the petitioner is very much disputing the cause of action, the area stated by the plaintiff in the original plaint. The original plaint is not enclosed in the typed set. However, on perusal of the plaint furnished by the plaintiff/ respondent, the said suit was filed by the plaintiff for passing of decree for demarcating the plaint schedule property after appointing a Commissioner through Court and decree for recovery of possession of the encroached area of 1.12 cents in the plaint schedule property from the defendant. The plaintiff in the said plaint contended that the defendant illegally removed the Western side fence in the plaint schedule property and encroached the plaint schedule property to an extent of 1.12 cents. It is also further contended by the plaintiff that to confirm the said encroachment or to confirm the exact area that the plaintiff is in possession and enjoyment of his property, on 29.10.2005, the property was measured by the legal authority attached to the area in the presence of the defendant and the encroachment was found.



Hence, the plaintiff has filed the suit for relief of demarcation, demarcating the plaint schedule property and for recovery of possession of the encroached area. Subsequently, the plaintiff filed an amendment petition and an amended plaint was also filed by the plaintiff.

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9.Now, the petitioner contended that without considering his averments made in the counter statement, the said amendment petition was allowed and amended plaint also filed by the plaintiff. The petitioner contended that after the amended plaint filed by the plaintiff, he has filed additional written statement in O.S.No.498 of 2006. In the additional written statement the petitioner herein contended that the suit property is valued property and the suit is bad for non-joinder of necessary parties. It is further contended by the petitioner herein that with a suit for demarcation is filed, all the adjacent owners are to be impleaded as necessary parties to the suit. If there is any deficiency of area for the plaintiff that may also be available along with other adjacent owners, so all the adjacent owners are to be impleaded.

10.In the amended plaint, the plaintiff contended that the plaintiff furnished the details viz., that he has purchased 36 ½ cents of land, comprised in R.S.No.1104/13 of Neendakarai 'B' Village on 30.01.1997 from one Ramachandran Nadar under a sale deed registered as document No.232/1997 of Rajakkamangalam Sub-Registry. On the very same day, he purchased 1 cent of land comprised in R.S.No.1104/13 of Neendakarai 'B' Village on 30.01.1997 from one Srinivasan under a sale deed registered as document No.233/97 of Rajakkamangalam Sub-Registry. (Amended as per order in I.A.No.70/2015 allowed on 20.08.2018 by this Court in CRP.(MD) No.2291/2016).

11.Hence, as per the said purchase and by way of said sale deed and also by way of filing the amendment application in I.A.No.70 of 2015 and also based on the direction of this Court in C.R.P.(MD) No.229 of 2016, the plaintiff filed the said amended plaint, for which, the petitioner herein also filed the written statement.

12.The petitioner contended that the trial is fixed to be commenced during the month of April-2019. The petitioner counsel also not aware of the fact that after allowing the Civil Revision Petition in the year 2016, when issues were framed is not known to the counsel, but, the counsel is very clear that the trial is fixed to be commenced during the month of April-2019. It is also observed that the petitioner has filed this I.A.No.1 of 2019 on 17.12.2018. So, it is the grievance of the petitioner that the Court has no jurisdiction to try the suit based on the amendment when there is no cause of action and also no proper Court fee is paid by the plaintiff. But, on perusal of the records and also hearing the petitioner, it is observed that the said I.A.No.1 of 2019 filed by the petitioner herein, to strike off the plaint is filed only on 17.12.2018. The counsel is also not aware whether when the



additional issues are framed and when it was framed, simply he represents that the case is posted in the month of April, whereas, specific date is not known to the petitioner's counsel and the counsel also represents that these are all the limited particulars furnished by the counsel before the concerned trial Court.

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13. On perusal of the records and also from arguments advanced by the learned counsel for the petitioner, it is observed that the said suit was filed in the year 2006 for the relief as stated by the plaintiff for a specific area and for delivery of possession and an amendment petition was also filed by the plaintiff and the same was very much contested by the petitioner herein and the said amendment petition filed by the plaintiff was allowed in which, an extended area was sought for demarcation. Based on the said order in favour of the plaintiff for making an amendment, the plaint was amended and this petitioner has also filed additional written statement and additional issues were also framed, whereas the petitioner counsel was not aware of the same. Further, it is observed that the case is also posted for trial and at this juncture the petitioner herein filed the petition to reject the plaint only on 17.12.2018. The petitioner counsel is also not aware of the fact whether the Commissioner was appointed in the said suit as prayed by the plaintiff for demarcation of the suit for the purpose of passing the decree of delivery of possession of the encroached area. Without verifying the above said aspect an extended area is sought for delivery by demarcating the same. Additional issues were also framed by the trial Court and the trial is also fixed, at this juncture the petitioner cannot file such application claiming that there is no cause of action and the trial Court has also no jurisdiction.

14. If at all the petitioner has any ground that the extended area may also fall in other boundary of the land on the other side, the same shall be verified only by examining the parties to the suit and these facts can very much be proved only at the time of trial. Those persons, who are holding the lands, who are all in the boundaries are necessary parties can be proved only at the time of trial and it is for the defendant to contest his case that there is no encroachment by him, since he is the owner of the land at the Western side of the plaint. The petition filed by the petitioner at this stage, inspite of the fact that amendment petition was allowed as early as in the year 2006 and the Civil Revision Petition was ordered in the year 2018, the petitioner filing this petition once again is only to prolong the case without having any other valid objection and hence, this Civil Revision Petition is liable to be dismissed.

15. Therefore, there is no merit in this petition. When the case is posted for trial, the petitioner has every opportunity in contesting his case and he can prove that he has no encroachment on the plaint schedule property. This Civil Revision Petition is



dismissed with a cost of Rs.1,000/- to be paid by the petitioner to the credit of the Honourable Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai, within a period one week from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The 1st Additional District Munsif,
Nagercoil.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC to MR.K.P.NARAYANA KUMAR, Advocate (SR-58997[F] dated 04/04/2019)

C.R.P. (PD) (MD) No.657 of 2019
and
C.M.P. (MD) No.3493 of 2019
02.04.2019

Ls

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