



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.2648 of 2015

and

MP(MD)No.1 of 2015

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Poovappa @ Meerasahib
Represented by
Power of Attorney
Nabeesa Beevi

... Petitioner

vs.

Balkees Beevi

... Respondent

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order in I.A.No.1982/2014 in O.S.No.470/2010 dated 16.07.2015 on the file of the Principal District Munsif, Tenkasi.

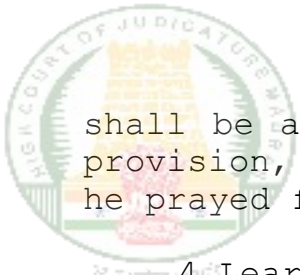
For Petitioner : Mr.M.Jahangir Baba
For Respondent : Mr.V.M.Bala Mohan Thampi

ORDER

Against the dismissal of the amendment petition, the plaintiff has filed this revision.

2.The facts of the case are that the petitioner/plaintiff filed O.S.No.470/2010 on the file of the Principal District Munsif, Tenkasi, for declaration and permanent injunction. After the cross examination of PW1, the petitioner filed the present amendment petition to include the measurement of the suit property stating that the said measurement was omitted to be mentioned due to oversight and inadvertence which was opposed by the respondent. The Court below after hearing both sides, dismissed the amendment petition holding that proposed amendment will introduce a new case, against which, the plaintiff has filed this revision.

3.Learned counsel for the petitioner would contend that the Court below has failed to consider that boundaries have already been mentioned and only measurement of the suit property was omitted to be mentioned due to inadvertence. He further contended that when there is no change in the description of the property by virtue of the proposed amendment, the reasoning of the Court below that the proposed amendment will introduce a new case is completely arbitrary and unsustainable. It is also stated that as per Order 6 Rule 17 CPC, all amendments which are necessary for the purpose of determining the real questions of controversy between the parties,



shall be allowed, but the Court below without considering the said provision, has erroneously dismissed the amendment petition. Thus, he prayed for allowing this revision petition.

4. Learned counsel for the respondent would contend that the amendment has been sought for after the commencement of the trial and no reasons have been stated as to why there is a delay in filing the above amendment petition and therefore, the Court below has rightly dismissed the amendment petition which does not require any interference by this Court. In support of his contention, he relied on a judgment of the Apex Court in 2019 (2) CTC 474, M. Ravanna vs. Anjanamma (dead) by LR's.

5. Heard the learned counsel for the petitioner as well as the respondent.

6. Perusal of record shows that the petitioner has contended that while drafting the matter, though four boundaries of the suit property were mentioned, the measurement of the suit property was omitted to be mentioned due to inadvertence and that had come to the notice of the petitioner only after the commencement of the trial.

7. Perusal of record further shows that the petitioner purchased the suit property in 1982 and the omission of measurement was only due to inadvertence. By the proposed amendment, the nature and character of the suit will not change and it will neither introduce a new case nor prejudice the other party as it is only an inclusion of the measurement of the suit property left out in the plaint. Further, as per Order 6 Rule 17 CPC, 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. Therefore, in my considered opinion, the learned Judge ought to have allowed the amendment petition. The judgment relied on by the counsel for the respondent is not applicable to the facts of the present case.

8. Accordingly, the order dated 16.07.2015 made in I.A.No.1982/2014 in O.S.No.470/2010, is set aside and I.A.No.1982/2014 is allowed. Resultantly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-

/ True Copy /



To

The Principal District Munsif,
Tenkasi.

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Copy To:

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+2 CC to M/s.M.JAHANGIR BABA, Advocate
(SR-71755[F] dated 27/06/2019)

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ES/23.07.2019/3P/6C