



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 30.10.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD).No.1925 of 2019

and

CMP(MD).No.9814 of 2019

Rajan @ Yesudhas

... Petitioner/Defendant

-Vs-

Riyan Burono

(Minor represented by father's mother

Maria Selvi as next friend)

... Respondent/Plaintiff

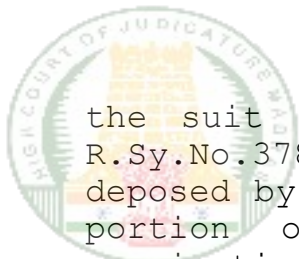
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 03.09.2019 made in I.A.No.1 of 2019 in O.S.No.175 of 2015 on the file of Principal District Munsif, Kuzhithurai.

For Petitioner : Mr.S.C.Herold Singh

O R D E R

The civil revision petition has been filed challenging the order passed by the learned Principal District Munsif, Kuzhithurai in I.A.No.1 of 2019 in O.S.No.175 of 2015.

2. The above application in I.A.No.1 of 2019 was filed for the purpose of amending paragraph No.5 of the plaint in O.S.No.175 of 2015. In the first sentence of paragraph No.5 of the plaint, the plaintiff has mentioned as 'northern portion of R.Sy.No.378/28' instead of 'southern portion of R.Sy.No.378/28'. The said application was allowed. However, the revision petitioner contended that the suit was filed for declaration declaring the title and possession of the plaintiff over schedule property, consequentially restraining the defendant, his men, servants and agents by a decree of permanent injunction from disturbing the peaceful possession of the plaintiff over the same in any manner. The revision petitioner further contended that based on the said plea, he has also filed the written statement in the year October 2015 and issues were framed and the trial was also commenced. Even in the interim application,



the suit schedule property was mentioned as northern portion of R.Sy.No.378/28. At the time of examination of the plaintiff, he deposed by way of proof affidavit, wherein he mentioned as northern portion of R.Sy.No.378/28 and during the course of cross-examination, the plaintiff has stated the same. After the evidence is over, the said suit was posted for argument on 04.01.2019. While so, the respondent / plaintiff filed an application in I.A.No.1 of 2019 in O.S.No.175 of 2015 seeking an amendment. According to the revision petitioner, there is no justification in filing the application to correct the averments in the plaint as 'southern portion' instead of 'northern portion'. But, without application of mind, mechanically the Court has allowed the application and the same is liable to be set aside.

3. Heard the learned counsel for the revision petitioner and perused the materials available on record.

4. On perusal of the plaint, it appears that the suit schedule property is the northern portion of R.Sy.No.378/28. Even for the written statement filed by the revision petitioner based on the said averment, there was no reply on the part of the respondent. In the proof affidavit filed by the respondent, it was mentioned as northern portion of R.Sy.No.378/28 and in the cross-examination, it was proceeded as northern portion of R.Sy.No.378/28. After completion of the trial, at the time of argument stage, the respondent / plaintiff filed the application to correct the error occurred in paragraph No.5 of the plaint.

5. Now, the issue to be decided in this matter is whether the amendment sought by the respondent / plaintiff is a bona fide one or not. Admittedly, the revision petitioner's property is situated in the southern portion and he has not own any property in the northern portion of the respondent's property. The intention to file the suit is only with regard to the southern portion and it is not on the northern portion. That is the reason why the respondent has impleaded the revision petitioner as a party, otherwise there is no need to implead the revision petitioner / defendant in the suit. When that being the case, there is no infirmity in the order passed by the Court below and the amendment sought by the respondent / plaintiff is a bona fide one. Therefore, the revision petition is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed and the order passed by the learned Principal District Munsif, Kuzhithurai in I.A.No.1 of 2019 in O.S.No.175 of 2015, dated 03.09.2019 is dismissed. While dismissing the revision petition, this Court directs the Court below to give an opportunity to the revision petitioner to cross-examine the respondent with regard to the amendment sought by the respondent in the suit. The said cross-examination shall be completed within a period of two weeks from the date of receipt of a copy of this order and the Court below shall dispose of the suit in O.S.No.175 of 2015 within a period of three months.

<https://hcmv.courts.gov.in/crmv/65/> No costs. Consequently, the connected



Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

WEB COPY

Sub Assistant Registrar(CS)

akv

To
The Principal District Munsif,
Kuzhithurai.

Copy to:

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

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-95384[F] dated
01/11/2019)

C.R.P. (PD) (MD) .No.1925 of 2019
30.10.2019

JMN(05.11.2019) 3P : 5C