



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.03.2019

CORAM
THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P(PD) (MD)No.1292 of 2013
and
M.P.(MD) No.1 of 2013

M.Kajamohideen (Died)
K.Zainambu (Died)

1.N.Asina Begum
2.Amjath Begum
3.Sahidha Begum
4.Rashidha Begum
5.Sofia Banu
6.Ashrab Nisha
7.K.Syed Abdullah : Petitioner 1 to 7/Respondents 5 to 11/
Defendants 5 to 11

.. Vs ..

1.N.Noorjahan
2.N.FAkir Mohideen : Respondents 1 & 2/Petitioners 1 & 2/
Plaintiffs 1 & 2
3.The Government of Tamil Nadu,
Through its District Collector,
Velunachiar Campus,
Thadikombu,
Dindigul District.
4.K.Raja Mohammed : Respondents 3 & 4/Respondents 2 &4/
Defendants 2 & 4

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and executable order dated 08.10.2012 passed in I.A.No.779 of 2012 in O.S.No.54 of 2006 on the file of the Principal District Munsif Court, Dindigul.

For Petitioner : Ms.S.Vijayashanthi

For Respondents: Mr.A.Hariharan
1 & 2



For Respondent 3: Mr.A.Muthukaruppan
Additional Government Pleader

For Respondent 4: No appearance

- - - - -

WEB COPY

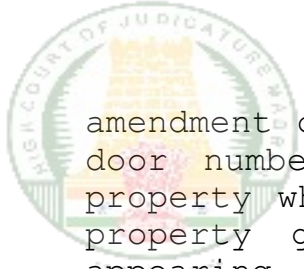
ORDER

This Civil Revision Petition is preferred against the order passed by the learned Principal District Munsif, Dindigul, in I.A.No.779 of 2012 in O.S.No.54 of 2006.

2.The brief facts that are necessary for the disposal of the Civil Revision Petition are as follows:

2.1.The respondents 1 and 2 in this Civil Revision Petition have filed the suit in O.S.No.54 of 2006 on the file of the learned Principal District Munsif, Dindigul, for declaration of title and consequential injunction in respect of a property which is shown to be in T.S.No.1007 in Begambur Jamal Street, Dindigul Town. The suit property is described with reference to the measurements, door number and boundaries on all four sides. The revision petitioners are defendants 5 to 11. The suit was contested by the revision petitioners on various grounds. The dispute also appears to be with reference to description of suit property. Therefore, the first plaintiff filed a petition for appointment of an Advocate Commissioner in I.A.No.588 of 2010 to inspect the property and to submit a report after surveying the suit property and other neighbouring properties. The Advocate Commissioner has also submitted a report. Since the Advocate Commissioner has given a report stating that the suit property which is the subject matter of suit as per the plaint description is in Survey No.1006 and not in Survey No.1007 with different measurements, the plaintiffs filed an application in I.A.No.779 of 2012 under Order VI, Rule 17 to amend the plaint. The amendment of plaint was intended to change the survey number, measurements, boundary description and door number of the suit property. It is stated in the affidavit filed in support of the petition that the mistakes found in the original plaint was due to inadvertence and that the plaintiffs will be put to serious prejudice in case the amendment petition is dismissed. The application for amendment was allowed. Aggrieved by the same, the revision petitioners who are defendants 5 to 11 have preferred the above Civil Revision Petition.

3.Sum and substance, the learned Counsel appearing for the petitioners submitted that the amendment is not only with reference to survey number but also to change the measurements, boundary description and the door number, etc. Though this is a case of pre-trial amendment, the learned Counsel appearing for the petitioners submitted that the property description now given in the amendment is in respect of a different property and hence, the petition for



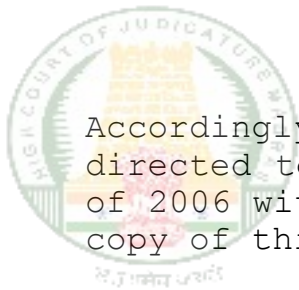
amendment cannot be permitted. Pointing out that the measurements, door number and boundary description are different for the new property which is entirely different as per the description of the property given in the amendment petition, the learned Counsel appearing for the petitioners submitted that the omission in the plaint is not due to inadvertence. It is also suggested that the entire property now sought to be introduced by way of amendment is a new property.

4.The learned Counsel appearing for the respondents submitted that it is not the case of the revision petitioners that the property described as per the amendment is a different property than the property for which the dispute exists. Since there is no dispute as to the identity of the property for which the rival claim of title is required to be decided, the learned Counsel appearing for the respondents submitted that the pre-trial amendment has been rightly allowed in the interest of justice.

5.This Court have considered the rival submission of the Counsel appearing on both sides.

6.In this case, it is the definite case of the revision petitioners that the property which was described now by way of amendment is a different property and that the plaintiffs want to change the subject matter of the lis by way of amendment. Having regard to the pleadings, this Court has reasons to hold that there is no dispute with regard to the identity of the property. When the Advocate Commissioner was appointed, the Advocate Commissioner has specifically pointed out that the disputed property namely the suit property lies in Town Survey No.1006 and not in Survey No.1007 as it was contended by the plaintiffs. It was further stated that the property in Survey No.1007 is a street and therefore, the description of the suit property as per the original plaint does not conform to the actual description of the property for which the suit is laid. The trial Court also found that no serious prejudice is likely to be caused to the revision petitioners in case the amendment is allowed. When the amendment does not change either the cause of action or the matter in issue or dispute, the amendment can be permitted without any difficulty. Only when there is serious dispute with regard to the identity of subject matter, the Court will have to be vigilant. Having regard to the facts of the present case on hand, this Court is fully convinced that the pre-trial amendment to change the description of the property is required in the interest of justice and that the property which is sought to be described by way of amendment is a property identifiable on ground for which the suit itself was also laid. Hence, this Court find no reason to interfere with the order passed in I.A.No.779 of 2012 and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7.Since the suit is of the year, 2006, both the Counsel agreed that the lower Court can be directed to dispose of the suit.



Accordingly, the learned Principal District Munsif, Dindigul, is directed to expedite the trial and dispose of the suit in O.S.No.54 of 2006 within a period of four months from the date of receipt of a copy of this order.

WEB COPY

Sd/-

Assistant Registrar (CS I)

// True Copy //

Sub Assistant Registrar (CS)

To

The Principal District Munsif,
Dindigul.

+1cc to Mr.A.Hariharan, Advocate, SR.No. 54554

C.R.P (PD) (MD) No.1292 of 2013
15.03.2019

SRM
KK/SAR/08.04.2019/ 4P- 3C