



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE K. RAVICHANDRABAABU

C.R.P. (PD) (MD) No. 82 of 2013
and
M.P (MD) No. 1 of 2013

Fakkir Mohamed

..Petitioner/Respondents/Plaintiff

-vs-

Mohamed Umar Farook

.. Respondent/Petitioner/
2nd Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.10.2012 made in I.A.No.4 of 2012 in O.S.No.38 of 2011 on the file of the Sub-Court, Sivagangai.

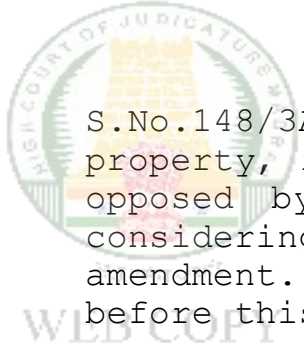
For Petitioner	:	Mr.R.Vijayakumar
For Respondent	:	No appearance

ORDER

The plaintiff is the revision petitioner. He is aggrieved against the order of the trial Court allowing amendment of written statement by the second respondent.

2.Heard Mr.R.Vijayakumar, learned counsel for the petitioner. Though notice was served on the respondent/second defendant, he is not appearing before this Court either in person or through counsel. His name is printed in the cause list.

3.The petitioner, as the plaintiff, filed O.S.No.38 of 2011 on the file of the Sub-Court, Sivagangai for declaration of his title to the suit property and consequential permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The second defendant filed a written statement originally by stating that the defendants are not aware of the possession of the plaintiff over the suit property and that the defendants purchased a property west to the suit property at S.No.148/3A1 measuring to an extent of 6 acre 98 cents. Subsequently, the second defendant filed an application under Order 6 Rule 16 and 17 of C.P.C to amend the written statement, wherein they want to contend as though the defendants are in possession of the plaintiff over the suit property is false and that the defendants purchased their property at



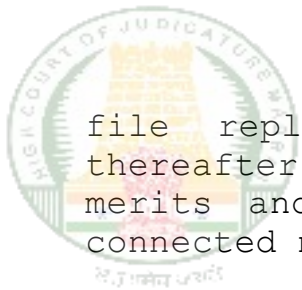
S.No.148/3A1A, which is located on the western portion of the suit property, instead of west of suit property. The said amendment is opposed by the plaintiff and however, the trial Court, after considering the rival contention of the parties, allowed the amendment. Hence, the present Civil Revision Petition is filed before this Court.

4.Mr.R.Vijayakumar, learned counsel for the petitioner contended that the admission made by the defendants cannot be withdrawn by filing amendment petition at a later point of time and therefore, the present amendment, which in effect is withdrawing the earlier admission, ought not to have been allowed by the trial Court. In support of his contention, the learned counsel also relied on a decision reported in **(2008) 7 SCC 85 [Gautam Sarup vs. Leela Jetly and others]**.

5.It is seen that the petitioner filed a suit for declaration and permanent injunction. The property referred to in the plaint contains S.Nos.148/3A and 148/3A2. In the original written statement filed by the defendants, it is stated that they have purchased the property at S.No.148/3A1A. It is stated by the defendants that instead of stating that their property is located in the western portion of the suit property, they have referred to as though it is located on the west of the suit property. I do not think that such stand of the defendants, that too, for only amending the written statement need to be interfered with at this stage, as it is well settled that any amount of pleadings without their being any supportive evidence cannot be a conclusive proof of the claim. The suit is admittedly one for title and for permanent injunction. Therefore, it is for the respective parties to adduce their evidence in support of their case so as to enable the trial Court to come to a just and proper conclusion. It is well settled that the amendment of the pleading have to be looked into liberally and hyber-technical reasons, cannot stand in the way of allowing amendment. I do not think that there is any categorical admission made by the defendants, as contended by the learned counsel for the petitioner, in their original written statement especially when they only referred to as though they were not aware of the possession of the plaintiff, which they want to now say as false.

6.In any event, all these pleadings are to be considered and decided by the trial Court only after going through the evidence let in in support of their pleadings.

7.In the above stated facts and circumstances, I do not think that the above decision of the Apex Court, which deals with the admission of the defendants, cannot come to the rescue of the order of the trial Court. Consequently, the Civil Revision Petition is dismissed. The petitioner/plaintiff is entitled to



file reply statement to the amended written statement and thereafter, trial Court will proceed to decide the suit on its merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

skn

To
The Subordinate Judge,
Sivagangai.

+ 1 CC TO Mr.R.Vijayakumar, ADVOCATE IN SR No.69361

C.R.P. (PD) (MD) No. 82 of 2013
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17.06.2019

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