

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

**C.R.P.(npd)No.4170 of 2011
and M.P.No.1 of 2011**

L.Thangapandi Thevar .. Petitioner

..VS..

1.V.Krishnan (died)
2.Mr.Sundara Kannan
3.Mr.Anthony Muthu
4.S.Kalai Selvi
5.K.Mani
6.K.Venkatesan
7.K.Marappan

.. Respondents

(R4 to R7 brought on record as
LR's of the deceased first respondent
viz., V.Krishnan vide Court order dated
21.08.2019 made in C.M.P.Nos.5977 to
5979 of 2017 in CRP NPD No.4170/2011)

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order dated 25.11.2010 passed in I.A.No.21428 of 2009 in O.S.No.3148 of 1986 on the file of XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.C.Harikumar

For Respondents : Mr.S.Sathish Rajan (R2)

ORDER

This Civil Revision Petition has been filed against the order dated 25.11.2010 passed in I.A.No.21428 of 2009 in O.S.No.3148 of 1986 on the file of XV Assistant Judge, City Civil Court, Chennai.

2. The petitioner filed a suit against the respondents in O.S.No.3148 of 1986 for eviction and the said suit was decreed exparte on 14.11.2003. Thereafter, he filed Execution Petition and during the pendency of the Execution Petition, the respondents filed two applications one under Section 5 of the Limitation Act to condone the delay in filing petition for setting aside the exparte decree and another application under Section 47 of Civil Procedure Code. Both the applications have been dismissed by the Executing Court. Challenging the same, the respondents filed the Civil Revision Petitions. During the pendency of the Civil Revision Petitions, the petitioner filed an application to amend the plaint and decree. The said application was dismissed by the Execution Court on the ground that the Civil Revision Petition filed by the respondents is pending before this Court.

3. The learned counsel for the petitioner would submit that the suit in O.S.No.3148 of 1986 was filed by the petitioner against the

respondents for eviction. After filing of the written statement, since the respondents do not contest the case the suit was decreed exparte on 14.11.2003. Thereafter the petitioner filed Execution Petition in E.P.No.1516 of 2005 before the X Assistant City Civil Court, Chennai. He would further submit that during the pendency of the said execution proceedings, the respondents filed two applications one to condone the delay in filing application for setting aside the exparte decree and another application under Section 47 of the Civil Procedure Code. Both the petitions were dismissed. He would further submit that since in the schedule measurement was wrongly mentioned as 34 feet instead of 84 feet on East West, he filed an application for amendment of plaint in I.A.No.21428 of 2009, which was dismissed by the trial Court on 25.11.2010 solely on the ground that Civil Revision Petition filed by the respondents are pending before this Court. The learned counsel for the petitioner would submit that now both the C.R.P in 620 of 2009 and also 247 of 2006 came to be dismissed on 21.08.2019. Therefore, as on date there is no C.R.P is pending before this Court. Therefore, he prays to set aside the order dated 25.11.2010 passed in I.A.No.21428 of 2009.

4. The learned counsel for the respondents would submit that the petitioner is not seeking amendment merely to the extent of 84 feet on East West, but also for entire eastern boundaries, which is not

permissible under Section 151 of the Civil Procedure Code. He would further submit that the Execution Petition filed by the petitioner was dismissed on technical ground that the Civil Revision Petition filed by the respondent is pending.

5. Heard both sides and perused the materials available on record.

6. Admittedly the petitioner filed a suit for eviction against the respondents in O.S.No.3148 of 1986. The said suit was decreed exparte on 14.11.2003. Thereafter, the petitioner filed Execution Petition in E.P.No.1516 of 2005. During the pendency of the same, the petitioner also filed petition under Section 47 of the Civil Procedure Code and application under Section 5 of the Limitation Act to condone the delay in filing the petition to set aside the exparte decree. Admittedly both the petitions were dismissed. Subsequently, the respondents filed revisions before this Court in C.R.P.No.247 of 2006 in 620 of 2009 . At that stage, the petitioner filed application to amend the plaint in I.A.No.21428 of 2009. The said petition was dismissed on the ground that the C.R.P filed by the respondent is pending and also the Court below observed that it is better to wait for the orders passed in C.R.P before passing any order in this petition. Therefore, challenging the said order the petitioner is before this Court. Since as admitted by both the counsels C.R.P Nos.

247 of 2006 and 620 of 2009 were dismissed on 21.08.2019, now the matter can be remitted to the Court below to decide the application filed for amendment.

7. Accordingly the matter is remitted back to the Court below and the Court below is directed to decide the application filed for amendment in I.A.No.21428 of 2009 in O.S.No.3148 of 1986 on merits and in accordance with law. Since the E.P. is pending from 2005, the Court below is directed to decide the application in I.A.No.21428 of 2009 in O.S.No.3148 of 1986 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

04.08.2020

Index : Yes/No
speaking order/non speaking order.
arr

To

The XV Assistant Judge, City Civil Court, Chennai.

WEB COPY

C.R.P.(npd)No.4170 of 2011

P. VELMURUGAN, J.

arr



Order in

CRP.NPD.No.4170 of 2011

WEB COPY

04.08.2020