

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

**CRP PD NO.4840 of 2013
and
MP No.1 of 2013**

T. Govindarajan Petitioner

-Vs-

1. Thangarasu
2. Shanmugam
3. Karthikeyan Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.96 of 2013 in O.S.No.283 of 2006 dated 15.07.2013 on the file of the Court of Principal District Munsif, Chidambaram.

For Petitioner : Ms.P.Srividhya
For Respondents : Mr.Sounthar

ORDER

The present Civil Revision Petition has been filed seeking for alteration of Re-survey number.

2. It is represented by the learned counsel for the Petitioner that, instead of Re-survey No.403/8, it has been erroneously mentioned as 403/5 and that, though the relief sought for in the Complaint and the Schedule of Property does not specify boundaries, in Paragraph No.2 of the Complaint, boundaries have been categorically mentioned. According to him, no prejudice would be caused to the respondents herein, as it is not going to change the basic nature of the Suit and the relief sought for in the Complaint. Otherwise, the petitioner will have to file a fresh case, either by withdrawing the Suit with liberty to file a fresh Suit on the same cause of action, or establish before this Court by filing a fresh case, and the period of pendency of the present Petition before this Court has to be excluded for the purpose of limitation. In support of his case, learned counsel has relied upon a decision of the Apex Court in the case of **Abdul Rehman vs. Mohd. Ruldu** reported in **2012 5 CTC 803**.

3. In reply, learned counsel appearing for the respondents submitted that the Suit was filed as early as in 2008 and Written Statement has been filed on 01.12.2008, wherein, it is stated that the description of the Suit

property is wrong. It is his contention that, the Petitioner failed to take steps to amend the Plaint immediately after filing of the Written Statement, and has belatedly come up with a Petition to amend the Plaint after five years. Learned counsel went on to contend that, the Petitioner has not made out a case that, in spite of his due diligence, he could not have filed the Amendment Petition before the trial and that, the entire trial is over now, and the matter is posted for arguments.

4. To substantiate his stand, learned counsel appearing for the Respondents relied upon an Apex Court decision in the case of **J. Samuel and others vs. Gattu Mahesh** reported in (2012) 2 CTC 300. He relied on, an another Apex Court decision in the case of **Vidyabai and others vs. Padmalatha** reported in (2009) 2 SCC 409, wherein, the Court has categorically held that, after the original provision to delete Act 46 of 1999, the same was again restored by Amendment Act 22 of 2002 with added proviso to bring an Application for amendment, being allowed after the trial has commenced. Unless and until the party establishes that in spite of due diligence he/she is not been in a position to make such amendment before

the commencement of the trial, it is left to the discretion of the Court to allow the amendment.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. It is true that, the Court is empowered to order amendment of the prayer in the Plaint even after the commencement of trial, if the party establishes that in spite of due diligence, he could not have raised the point before the commencement of trial. In this case, no such evidence is available, and even after the filing of Written Statement as early as on 01.12.2008, the petitioner herein has not woken up from slumber and thereafter has tried to stall the entire proceedings.

7. This Court is not going into the aspect as to whether the pleading is not going to change the basic nature of the suit and the relief sought for. As there is exorbitant delay and that the petitioner herein has slept over the matter, no one, much less this Court can wake up the

petitioner from slumber and point out to him to be vigilant. In this case, the petitioner was not vigilant, and hence, the pleading urged by the petitioner is not acceptable and this Petition is liable to be dismissed.

8. The trial Court is expected to hear the arguments and, if required, accept the Written Arguments, which shall be filed by the Respondents within **one month** from the date of receipt of copy of this order, and thereafter give **15 days' time** for reply arguments, if any, and take a final decision in the Suit within a period of **one month**.

9. **The Civil Revision Petition is dismissed with the above direction.** No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

04.03.2020

Index : Yes / No

Speaking order : Yes / No

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To: The Principal District Munsif, Chidambaram.

S.VAIDYANATHAN, J.

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