

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2842 of 2018
and CMP No.16716 of 2018

Bakthavatchalam Naidu ...Petitioner

Vs.

1. Ayyasamy
2. Selvam

... Respondents

Prayer: The Civil Revision petition filed under Section 227 of the Constitution of India, against the fair and decretal order dated 14.08.2018 passed in I.A.No.323 of 2018 in O.S.No.249 of 2014 on the file of the Principal District Munsif, Tiruvannamalai.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : No appearance

ORDER

The plaintiff in O.S.No.249 of 2014 has come up on the revision challenging an order made in I.A.No.323 of 2018 dismissing the said application which was one for amendment of the plaint. The plaintiff/petitioner herein sued for a permanent injunction restraining the defendants from interfering with the peaceful possession of the property which according to him was purchased by him under a Sale Deed dated 01.02.1996.

2. The suit was resisted by the defendants contending that they have been in possession of Natham land and they have nothing to do with the suit property. When the suit went for trial, the plaintiff found that though he had purchased an extent of 1 Acre of land under a Sale Deed dated 01.02.1996, while describing the schedule of property, instead of showing the land extent as 1 Acre, it has been shown to 0.39.0 hectare equivalent to 96.33 cents, that is about 4.67 cents lesser than the actual area purchased by the plaintiff. Claiming that this mistake had crept in because of the incorrect measurement in the patta, the plaintiff sought for amendment of the plaint.

3. The learned trial Judge dismissed the application on the ground of delay and on the ground that this fact has already been taken as a defence in the written statement and therefore, the plaintiff who was aware of this mistake cannot seek amendment after the trial has commenced. Hence, the revision.

4. I have heard Mr.K.Govi Ganesan, learned counsel appearing for the petitioner. The respondents though served, are not appearing either in person or through counsel duly instructed.

5. Mr.K.Govi Ganesan, learned counsel appearing for the petitioner would contend that both the reasons assigned by the learned trial Judge are erroneous. He would point out that there is no plea regarding the mistake in the extent of land in the written statement. He would further point out that once the Sale Deed dated 01.02.1996 conveyed an extent of 1 acre in his favour, he is entitled to sue for the entire extent. He says it was a bonafide mistake that had occurred and the Court should have allowed the plaintiff to correct the said mistake.

6. As far as the delay in filing the application is concerned, Mr.K.Govi Ganesan, learned counsel for the petitioner would submit that

the fact that there was a wrong description, came to light only at the time when they are preparing for arguments and it is not due to any negligence on the side of the plaintiff.

7. I have considered the submissions of the learned counsel for the petitioner.

8. The suit is one for permanent injunction and the amendment sought for is only in the extent of the property. The observation of the trial Court that the defendants raised the contentions in the written statement regarding the extent of the property is incorrect. There is no such plea in the written statement. All that the defendants would claim is that they are in possession of Grama Natham land and they have nothing to do with the property of the plaintiff. Therefore, one of the reasons assigned by the trial Court is clearly erroneous.

9. As far as the delay is concerned, I find that the defendants won't be prejudiced because of the delay. It is not their case that they have encroached upon the plaintiff's property at any point of time and they have perfected title by adverse possession. It is the case of the defendants that

they are not in possession of the property that belonged to the plaintiff. In view of the said stand taken and in view of the absence of prejudice, I do not think that the delay alone could be a cause to reject the plea for amendment.

10. In view of the above, the order of the trial Court dismissing the application for amendment is set aside. The Civil Revision petition is allowed. The application in I.A.No.323 of 2018 stands allowed. The defendants would be entitled to file an additional written statement if they are so advised. No costs. Consequently, connected miscellaneous petition is closed.

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vum

Index: Yes/No

Speaking order / Non speaking order

To:

The Principal District Munsif, Tiruvannamalai.

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