

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD).No.42 of 2018

Kavitha

...Petitioner

Vs.

1.K.G.Ravikumar

2.Jayakantha

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 19.09.2017 made in I.A.No.423 of 2017 in O.S.No.102 of 2015 on the file of the Subordinate Court, Uthangarai.

For Petitioner : Mr.D.Lakshmipathy
For Respondents : Mr.G.Vigneshwar
for M/s.V.Nicholas for R1
No appearance for R2

ORDER

Challenging the order passed in I.A.No.423 of 2017 in O.S.No.102 of 2015 on the file of the Subordinate Court, Uthangarai, the 2nd defendant has filed the above Civil Revision Petition.

2. The plaintiff/1st respondent filed the suit in O.S.No.102 of 2015 for declaration and permanent injunction. The 2nd defendant filed the written statement, denying the allegations made by the plaintiff in the plaint and stated that she purchased the property in S.No.184/23 from the first defendant through a registered sale deed dated 14.12.2009. Thereafter, in the said suit issues were framed and the same was posted for trial. Subsequently, the plaintiff/1st respondent filed an application in I.A.No.423 of 2017 to amend the survey numbers in the suit scheduled property as 184/23, 184/24 and 184/25 instead of 184/20 and 184/22. In the affidavit filed by the 1st respondent therein, he has stated that his father executed a gift deed dated 28.11.2005 in respect of the property in S.No.184/2, subsequently, it was sub divided as 184/23, 184/24 and 184/25. At the time of filing of the above suit, the suit scheduled property was mistakenly mentioned as S.Nos.184/20 and 184/22. Based on the contentions made by the 1st respondent, the Court below allowed the application. Challenging the same the present Civil Revision Petition has been filed.

3. The learned counsel for the revision petitioner would submit that the 2nd respondent/1st defendant, who is none other than the wife of the plaintiff sold the property in S.No.184/23 in favour of the revision petitioner and hence, the 1st respondent seeking amendment against his own documents is impermissible in law. The learned counsel for the revision petitioner would further submit that S.Nos.184/23, 184/24 and 184/25 are Natham lands and the same are connected with S.No.184/2. The 2nd respondent is concerned with S.Nos.184/24 and 184/25, whereas the revision petitioner is concerned with S.No.184/23. Therefore, the aforesaid survey numbers are unnecessarily being amended in the plaint. Therefore, the order of the Court below is liable to be set aside.

4. On perusal of the documents, the suit scheduled mentioned property in the plaint is described as follows:

“Description of Properties

Krishnagiri R.D., Pochampalli, Sub R.D., and Taluk, Kannandahalli Village is S.No.184/2.

Thak -1 :- A vacant site measuring East-West 12 feet; and North-South 20 feet (240 square feet) situated with

in the boundaries of South of Rajaveedhi;
West of House site of Ramasamey son of Karian ;
North of Thak-2 described here under; and
South of House property of Kumar.

Thak -2 :- A House site measuring East-West 31 feet;
North-South 65 feet (2015 square feet) situated with in
the boundaries of

South of Thak-1 mentioned above and House
site of Ramasamy son of Karian ;
West of House of Masheelan son of Karian ;
North of House site of Chennai ; and
East of House of Kumar &Nagan
New S.Nos.184/23, 184/24 and 184/25”

5. Considered the above facts. In the written statement filed by
the revision petitioner/2nd defendant, it has been specifically stated that she
has purchased the property in S.No.184/23 alone and the same is connected
with S.No.184/2 and hence, she prayed for dismissal of the suit. In the
affidavit filed by the 1st respondent/plaintiff, it has been stated that patta
No.91 was issued in the name of the 1st respondent in respect of the
properties in S.Nos.184/20 and 184/22, and the property in S.No.184/2

measuring an extent of 2255sq.ft was gifted by the father of the 1st respondent through a registered gift deed dated 28.11.2005. Subsequently, S.No.184/2 was sub divided as S.Nos.184/23, 184/24 and 184/25. At the time of filing of the above suit, the suit scheduled property was mistakenly noted as S.Nos.184/20 and 184/22 instead of S.Nos.184/23, 184/24 and 184/25. To rectify the said mistake, amendment application has been filed by the 1st respondent. On a perusal of the affidavit filed therein, it is seen that the 1st respondent has not given any satisfactory reasons to amend the plaint. However, in the written statement, the revision petitioner has specifically stated that she has purchased the property in S.No.184/23 alone. According to the learned counsels on either side, the trial has not yet been commenced.

6. Therefore, in view of the above facts and by considering the amendment of the prayer in the suit scheduled mentioned property, it is clear that the dispute arose only in respect of S.No.184/23 and not in respect of other Survey numbers and there is also no proper explanation or

reason stated in the affidavit filed by the 1st respondent. The revision petitioner/2nd defendant has objected to amend the prayer in the other S.Nos.184/24 and 184/25, since the same are concerned with other parties.

7.In such circumstances, this Court is of view that the order passed by the Court below is modified only to the extent of S.No.184/23, and in respect of other survey numbers, the relief granted by the trial Court is dismissed. Therefore, the order passed in I.A.No.423 of 2017 in O.S.No.102 of 2015 is modified to the extent indicated above. The Civil Revision Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2020

Index : Yes / No

Internet : Yes / No

Speaking order / Non Speaking Order

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To

The Subordinate Judge,
Uthangarai.



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D.KRISHNAKUMAR, J.,

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