

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No. 3173 of 2018

Murugaiyan

S/o.Kuppu

Manakudi Village

Nagapattinam District Munsif

Thirukuvalai Taluk

Nagapattinam District

... Petitioner

-Vs-

1. Somu

2. Ramakrishnan

3. Thangaiyan

... Respondents

Prayer : Petition filed under Article 227 of Constitution of India pleased to set aside the fair and final order of District Munsif Court, Nagapattinam, dated 24.11.2017 made in I.A.No.706 of 2015 in O.S.No.285 of 2004 and allow the said application.

For Petitioner

: Mr.S.Sounthar

For Respondents

: Mr.P.Dinesh kumar

ORDER

The plaintiff/decreed holder in O.S.No.285 of 2004, has come up with this Civil Revision Petition challenging the dismissal of the application in I.A.No.706 of 2015 filed by him seeking amendment of the plaint and the decree under Section 152 of the code of civil procedure.

2. The suit was laid by the plaintiff for specific performance or in the alternative for declaration of an easementary right and for a mandatory injunction to remove the encroachments. The suit was decreed for the alternative relief namely declaration of the easementary right and mandatory injunction on 10.03.2008. The decree was put in execution and the encroachment of an extent of 2 cents in S.No.102/13 was removed. Claiming that the entire encroachment has not been removed and that the plaintiff discovered that out of the two cents of lands described by him in the suit within specific boundaries, only one cent was situated in 102/13 and the remaining one cent was situated in 102/12G, the plaintiff filed an application seeking amendment of the plaint and the decree, to include S.No.102/12G in the description of property. This application was resisted by the defendants/judgment debtors contending that the plaintiff's application is misconceived and it seeks to enhance the scope of the suit.

3. It is claimed that the plaintiff had accepted the execution of the decree and had signed a delivery warrant and hence he is precluded from claiming that the decree remains unexecuted. The fact that the Executing Court had also terminated the EP on the ground that the decree has been satisfied, was also invoked by the defendants to buttress their contention.

4. The learned trial judge on considering the application, concluded that the Application under 152 is not maintainable. Considering the scope of Section 152, the learned trial judge held that only accidental errors or mistakes can be corrected under Section 152 of C.P.C. The trial judge also found that the plaintiff is attempting to expand the very scope of the suit by including a new property in the suit. On the aforesaid conclusions, the learned trial judge dismissed the application. Hence, this Revision.

5. Heard, Mr.S.Sounthar, learned counsel appearing for the petitioner and Mr.P.Dineshkumar appearing for the respondents.

6. Mr.S.Sounthar, learned counsel appearing for the petitioner would vehemently contend that the trial court was not right in dismissing the application on the ground that the plaintiff has accepted execution of the decree. Referring to the contents of the delivery warrant, the learned counsel

would submit that it is obviously wrong, because, there is no decree for possession and the delivery warrant reads as if possession has been handed over to the plaintiff.

7. Mr.S.Sounthar would further contend that the plan filed by him before the trial court would show that only one cent of the suit property is situated in S.No.102/13 and the other one cent is situated in 102/12G . He would further contend that the trial court had dismissed the application without attempting to find out where exactly the suit property lies by fixing the boundaries.

8. Contending contra Mr.P.Dineshkumar, learned counsel appearing for the respondents would submit that the plaintiff wants to expand the scope of the suit and wants to conduct a fresh trial in the amendment application. He would also submit that the scope of Section 152 of C.P.C. is limited only to correction of clerical or arithmetical errors or accidental slips or omissions.

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9. I have considered the rival submissions. The plaintiff sued for

declaration of easementary right over particular strip of land situate within four boundaries setting out the extent as well as the survey number. The plaintiff accepted the execution and signed the delivery warrant stating that the encroachment of an extent of 2 cents has been removed. After doing so, the plaintiff has now come up with this application seeking an amendment to include another survey number contending that one cent of land in that survey number has been encroached upon.

10. This, in my considered opinion, is nothing but expanding the scope of the suit and attempting to include some other properties which was not subject matter of the suit earlier.

11. Though the learned counsel for the petitioner would contend that this one cent of land which is now in survey number 102/12G lies within the 4 boundaries, there is no evidence to substantiate the same. Even if such evidence is available, I do not think that the Court, in an application under Section 152 of CPC, can go in to that question and decide as to whether the land in survey number 102/12G would form part of the suit property.

12. Such an exercise, in my considered opinion would be beyond the

scope of Section 152 of the Code of Civil procedure for the Court will be conducting a fresh trial after the decree had been granted. Therefore, I do not find any error in the order of the trial court in dismissing the application.

13. Hence this civil revision petition is dismissed. However, there shall be no order as to costs.

04.08.2020

Index: Yes / No
Speaking order / Non speaking order

kmm

To
The District Munsif Court,
Nagapattinam.



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R.SUBRAMANIAN, J.

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