



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP(MD)No.164 of 2020

and

CMP(MD)No.921 of 2020

G.Karmegam

... Revision Petitioner /
Petitioner / Plaintiff

versus

1. K.Karuppiyah Konar
2. K.Kayambu Konar
3. K.Rajalakshmi
4. S.Kavitha
5. S.Neelavathi ...Respondents / Respondents / Defendants
(Respondents 1, 3 to 5 were set ex parte)

Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 04.11.2019 made in I.A.No.204 of 2019 in O.S.No.33 of 2016 on the file of the District Munsif Court, Paramakudi.

For Petitioner : M/s.S.Kumar

For R2 : Mr.P.T.S.Narendravasan

ORDER

The revision petitioner is the plaintiff in O.S.No.33 of 2016 on the file of the District Munsif Court, Paramakudi. The said suit has been filed for declaration, declaring that out of 136 cents, the property to the extent of 69 cents belonged to the plaintiff and also for permanent injunction. In the said suit, the plaintiff/revision petitioner filed an application in I.A.No.204 of 2019 in O.S.No.33 of 2016 to amend the plaint stating that the properties including the suit schedule property are having the total extent of 136 cents, in which, he is entitled to the extent of 68 cents in the northern side of the properties, but, instead of that, patta was granted to him to the extent of 53 cents only, against which, he filed the present suit. However, in the northern side of Survey No.174/11, he is entitled to the extent of 15 cents, but, in



the schedule of property, Survey No.174/10 alone has been mentioned. Therefore, it is necessary to include Survey No.174/11 in the schedule of property. After enquiry, the Court below has dismissed the application. Challenging the same, the plaintiff has filed the present revision petition before this Court.

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2. The learned counsel appearing for the revision petitioner submitted that the revision petitioner was granted patta for 53 cents instead of 68 cents and since the remaining extent of 15 cents falls in Survey no.174/11, the said application was filed to include the Survey No.174/11 in the plaint. But, the Court below, without considering the same, dismissed the said application. The learned counsel further submitted that the omission to include Survey No.174/11 is neither willful nor wanton. Further, the amendment did not change the nature and character of the suit and no prejudice would be caused to the respondents. Therefore, the order of dismissal passed by the trial Court is not sustainable in law and hence, the same is liable to be set aside.

3. The learned counsel appearing for the second respondent submitted that the plaintiff/revision petitioner, even after knowing very well the same, has not taken effective steps to amend the plaint in time, but, he filed the said application to include Survey No.174/11 only after the commencement of trial. Once the trial commenced, the amendment application cannot be entertained. Furthermore, the first respondent herein, who is the first defendant, has also filed a suit in O.S.No.83 of 2014 regarding the property in Survey No.174/11 and in the said suit, the revision petitioner had filed an application to implead himself as one of the defendants and the same was also allowed. Therefore, there is no necessity to amend the plaint by including the Survey No.174/11 in the present suit.

4. Heard both sides and perused the records.

5. On a perusal of the materials available herein, it is seen that the revision petitioner has filed the suit in O.S.No.33 of 2016 for declaration, declaring that out of 163 cents, the extent of 69 cents in Survey No.174/10 belonged to the plaintiff. Originally, the fact remains that the patta was granted to the revision petitioner to the extent of 58 cents and the remaining extent of 15 cents falls in Survey No.174/11. Therefore, the revision petitioner filed the amendment application to include the survey No.174/11. It is also seen that the second respondent herein also filed the suit in O.S.No.100 of 2010 before the Sub Court, Paramakudi, for declaration and recovery of possession in respect of the property in Survey No.174/11. When the revision petitioner himself claimed that he owns the property in Survey No.174/11 and with regard to the same, he also sought the relief of declaration, the application for amendment can be allowed and no prejudice would be caused to the respondents herein. However, after the amendment, the respondents herein can

file an additional written statement and contest the suit in accordance with law.

6. Since the revision petitioner, first respondent herein and second respondent herein filed separate suits in O.S.Nos.33 of 2016, 83 of 2014 and 100 of 2018 respectively and the parties in the above suits are one and the same and the property is also related to S.Nos.174/10 and 174/11, there is a possibility of passing contradictory verdicts in the very same subject matter. Therefore, this Court is of the view that all the three suits can be tried together by one Court and transfer for simultaneous trial.

7. Therefore, the suit in O.S.Nos.33 of 2016 and 83 of 2014 are withdrawn from the District Court, Paramakudi and transferred to the Sub Court Paramakudi, to try along with O.S.No.100 of 2018 for simultaneous trial. The District Court, Paramakudi, is directed to send all the records relating to O.S.Nos.33 of 2016 and 83 of 2014 to the Sub Court, Paramakudi. The learned Sub Judge, Paramakudi, after receiving all records, is directed to try all the suits and dispose of the same, within a period of six months from today.

8. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The District Munsif Court,
Paramakudi.

2. The Sub Court,
Paramakudi.

+1 CC to M/s.S.KUMAR, Advocate (SR-11264[F] dated 12/03/2020)

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-11250[F] dated 12/03/2020)

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<https://hcmcs.courts.gov.in/CaseDetails/3P-5C>