



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2020

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) .No.902 of 2015 (NPD)

WEB COPY

- 1.S.Andiappa Pillai (Died)
- 2.Shanmuga Subramanian
- 3.Manikandan
- 4.Harihara Vinayagam
- 5.Rajalakshmi

... Petitioner/Petitioner/Appellant

(Petitioners 2 to 5 are brought on records as Lrs of deceased P1 vide Court dt.01.06.2017 made in C.M.P (MD) .Nos.4351 to 4353 of 2017)

Vs

Jeyaraman

... Respondent/Respondent/
Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to revise and set aside the order passed in I.A.No.141 of 2013 in A.S.No.72 of 2011 dated 11.11.2014 pending on the file of the Sub Court, Sankarankoil.

For Petitioners
For Respondent

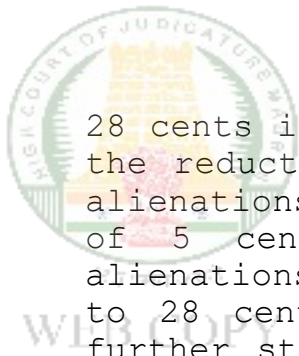
: Mr.S.Ramesh Alias Ramiah
: Mr.P.Subbaraj

O R D E R

This Civil Revision Petition is directed against the order passed in I.A.No.141 of 2013 in A.S.No.72 of 2011 pending on the file of the Sub Court, Sankarankoil.

2.The brief facts that are necessary for the purpose of disposing of this Civil Revision Petition are as follows.

The revision petitioner is the plaintiff in the suit in O.S.No.299 of 2007 on the file of the Principal District Munsif, Sankarankoil. The suit is for declaration of title and for consequential injunction in respect of the suit first schedule, after excluding the second schedule property. The said suit is also for mandatory injunction to remove the construction put up by the defendant in the suit second schedule property. In the plaint, the suit second schedule is shown as a portion of the suit first schedule, for which, the plaintiff claims title. The said suit was dismissed in toto and hence, the revision petitioner filed an appeal suit in A.S.No.72 of 2011 before the Sub Court, Sankarankoil. During the pendency of the said appeal suit, the revision petitioner filed an application for amendment of the plaint restricting his claim to



28 cents instead of 35 cents as per original plaint. The reason for the reduction of extent of land is stated to be on account of two alienations, which were made by the revision petitioner in respect of 5 cents and 2 cents respectively. As a result of such alienations, it is stated that the plaintiff's holding is restricted to 28 cents out of 35 cents as per the original plaint. It is further stated that the amendment in respect of the description of the properties is consequential as the amended description is for the reduced extent. The learned Subordinate Judge, Sankarankovil, dismissed the petition mainly on the ground that the amendment is sought for with an unexplained delay of 7 years and it cannot be entertained, especially when the petitioner had not approached the Court with due diligence. As against the order of the learned Subordinate Judge, Sankarankoil, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the petitioner submitted that the lower Court has committed an error by dismissing the petition for amendment, when the amendment was sought for only to make the plaint proper by taking into account the alienations made by the plaintiff. The learned counsel further submitted that the exclusion of area and the alteration in the description of the properties is necessary as the prayer of the plaint without amendment is improper and un-sustainable having regard to the admitted facts. Since the amendment is sought for, without affecting the rights of the defendant in the suit, the learned counsel further submitted that the amendment is necessary and proper and the same has to be allowed by the lower Court.

4.The learned counsel appearing for the respondent submitted that the amendment application is liable to be dismissed on the sole ground that it is filed belatedly, causing much inconvenience to the respondent. He further submitted that the petitioner failed to show due diligence as the petition ought to have been filed long back.

5.This Court considered the rival submissions as well as the findings of the Court below.

6.The present petition for amendment is not for introducing new facts or new case. The petitioner has explained that the amendment is only for restricting the suit claim to 28 cents instead of 35 cents. As the amendment is necessary and proper having regard to the alienations which are referred to in the petition filed by the petitioner, the learned subordinate Judge has observed that the plaintiff knows that the suit second schedule is not properly described and that the sale deed referred to by the revision petitioner in the affidavit is not mentioned in the original plaint. It is not in dispute by amending the plaint, the petitioner has only restricted claim by abandoning his claim in respect of a portion of the property that was alienated by him. If this amendment is not allowed, the relief would be improper and it will result in unnecessary complication affecting the fair disposal of appeal. If



by alienation, some portion of the suit property had already been disposed of by the revision petitioner, the plaint has to be suitably amended. Amendment is permissible at any stage of the proceedings.

7. The learned counsel appearing for the revision petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Usha Devi Vs. Rijwan Ahamd and Others**, reported in **(2008) 3 MLJ 287 (SC)**. The Hon'ble Supreme Court, in the above judgment, has justified the amendment, if the amendment is necessary for the purpose of bringing to the fore the real question in controversy between the parties as the refusal to permit the amendment would create needless complications at the stage of execution. The Hon'ble Supreme Court has indicated further that the amendment in such cases can be allowed, despite there is lack of due diligence on the part of the plaintiff.

8. In the case on hand, the suit property admittedly exists with a wrong description without amendment. Unless the alienation is accounted for and the plaint schedule is properly described it may result in unwanted complications. The situation will create only confusion and lead to further application before the Court to grant proper relief to the plaintiff. Assuming that the suit is decreed, there will be further complication at the time of execution. To resolve the issues preciously and to identify the property, the amendment in the present form has to be ordered. Therefore, this Civil Revision Petition is allowed and the order passed in I.A.No.141 of 2013 in A.S.No.72 of 2011, on the file of the Sub-Court, Sankarankoil, is set aside. No costs.

Sd/-

Assistant Registrar (CSI)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purpose, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Sub Court,
Sankarankovil.

+1 CC to M/s.S. RAMESH @ RAMIAH, Advocate (SR-16040[F] dated 07/09/2020)