



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P (MD)Nos.2296 & 2299 of 2019

and

C.M.P. (MD)No.12080 of 2019

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Gnanadhas

...Petitioner in both Revision Petitions

Vs.

Johnson

...Respondent in both Revision Petitions

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order, dated 24.10.2019 made in I.A.No.15 and 16 of 2019 in O.S.No.16 of 2012, on the file of the Subordinate Court, Kuzhithurai.

In both CRPs.

For Petitioner : Mr.K.N.Thampi

For Respondent : Mr.N.Dilipkumar

ORDER

These Civil Revision Petitions are filed against the order of dismissal passed in I.A.Nos.15 and 16 of 2019, seeking to re-open the case and to correct the arithmetical mistake by substituting 40 ½ cents instead of 39 ½ cents.

2. The suit has been originally filed for partition stating that the plaintiff is entitled for 39 ½ cents instead of 40 ½ cents. No doubt. the evidence has been adduced by the parties to the extent of partition for 39 ½ cents. The plaintiff claims the above extent on the basis of settlement deed and also by way of succession. After evidence is closed, an application was taken out to amend the extent from 39 ½ cents to 40 ½ cents.

3. It is the contention of the plaintiff that the above 39 ½ cents were arithmetical mistake, instead of 40 ½ cents wrongly mentioned as 39 ½ cents in the plaint. It is purely arithmetical mistake and hence prayed to amend the plaint. For that purpose, re-open petitions have been filed.

4. The respondent filed a counter denying the rights of the petitioner in the above extent. According to the respondent, the plaintiff is not even entitled to 39 ½ cents and entitled for only



39.368 cents alone and hence prayed for dismissal.

5. The lower Court dismissed the applications. The learned Counsel appearing for the Revision Petitioner would submit that the amendment sought for is only to set right the arithmetical mistake. In the plaint pleadings, paragraph Nos.3, 7, 8 and 9, the plaintiff has clearly pleaded the nature of extent. Those extent is if calculated, it will comes to 40 ½ cents. Therefore, the Trial Court having accepted such mistake simply dismissed the application on the part of delay. Hence, prayed to allow the applications.

6. The learned Counsel appearing for the respondent would submit that to what, they denied the rights of the plaintiff. The amendment has been filed only to drag on the proceedings.

7.I have perused the entire materials.

8.No doubt, normally post trial amendment shall not be permitted to include any new facts in the plaint. What was sought to be amended in this case is only to set right the arithmetical mistake while mentioning the extent of the suit property. It is the case of the plaintiff that in respect of 40 ½ cents, the suit schedule property extent is shown as 39 ½ cents. Perusal of the plaint paragraph Nos.3, 7, 8 and 9 shows that the plaintiff has pleaded that he is entitled to 40 ½ cents. Only in the schedule of property, mistake had crept in, instead of mentioning the correct extent i.e. 40 ½ cents.

9. In view of the above, set righting the arithmetical error, no prejudice would whatsoever be caused to the other side. Accordingly, the order of the Trial Court is set aside and the plaintiff is permitted to amend the schedule of property and these Civil Revision Petitions are liable to be allowed.

10. The learned Counsel appearing for the Revision Petitioner also submitted that the evidence is already on record and no fresh evidence is required by the plaintiff. Such view of the matter, it is made clear that the plaintiff is not permitted to file any additional evidence with regard to amendment. Since the evidence is already on record, with regard to entire extent already entitled by the plaintiff, only amendment alone is permitted. After that, such amendment shall be carried out as expeditiously as possible and thereafter, the Trial Court shall dispose the suit within two months from the date of receipt of copy of this order. It is also made clear that the Trial Court shall decide the suit on its own merits, whether the plaintiff is entitled to 40 ½ cents or not, has to be decided on the basis of merits of the case.



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11. In the result, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RM

To

1.The Subordinate Court,
Kuzhithurai.

2.The Section Officer, (2 COPIES)
V.R. Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-4458[F] dated 03/02/2020)

+1 CC to M/s.K.N.THAMBI, Advocate (SR-3867[F] dated 30/01/2020)

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SMA/14/02/2020/3P/6C