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C.R.P. (NPD) .No.527 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.527 of 2015

and

M.P.No.1 of 2015 & C.M.P.No.17206 of 2021

C.Mahalingam

.. Petitioner

Vs.

A.Vadivelu

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 01.09.2014 made in I.A.No.318 of 2012 in O.S.No.196 of 2003 on the file of the District Munsiff Court, Thiruvallur.

For Petitioner : Mr.P.Johnson

For Respondent : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

This Civil Revision Petition is filed to set aside the fair and decretal order dated 01.09.2014 made in I.A.No.318 of 2012 in O.S.No.196 of 2003 on the file of the District Munsiff Court, Thiruvallur.



2.The petitioner is the plaintiff in O.S.No.196 of 2003 on the file of the District Munsiff Court, Thiruvallur. He filed the said suit against the respondent / defendant for declaration that suit property ABCD is common pathway, to direct the respondent / defendant to demolish the encroached portion and leave the vacant portion for free passage without any disturbance. The respondent filed written statement on 05.03.2004 and is contesting the suit. Trial commenced and proof affidavit of the petitioner was filed. On that stage, the petitioner filed I.A.No.318 of 2012 under Order VI Rule 17 of the Code of Civil Procedure for amendment of the schedule of the property. According to the petitioner, by inadvertence certain mistakes have crept in in describing the schedule of property and prayed to amend the schedule of the suit property. The respondent filed counter affidavit and stated that the amendment sought for by the petitioner is only with a view to introduce a new case and if the petition is allowed, the nature of the suit will be changed. He further stated that the suit is filed in the year 2003 and the respondent filed written statement on 05.03.2004. Only to protract the suit proceedings, the petitioner has come out with the present I.A. and prayed for dismissal of the I.A.



3.The learned Judge considering the averments in the affidavit, counter affidavit, nature of amendment sought for and rough sketch filed along with the plaint, dismissed the I.A.

4.Against the said order of dismissal dated 01.09.2014 made in I.A.No.318 of 2012, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner reiterated the averments in the affidavit filed in support of the I.A. and further submitted that he filed another application in I.A.No.1122 of 2012 for amendment. In the said application, the petitioner has stated the entire facts, but his earlier advocate purposely avoided to mention certain vital facts. Both the applications were heard together, only I.A.No.1122 of 2012 was allowed and thereafter, amendment was carried out and amended copy of the plaint was also filed. The learned Judge ought to have allowed this application also. Unless amendment is ordered, no useful purpose will be served in keeping the suit pending and prayed for allowing the Civil Revision Petition.

6.Though the respondent entered appearance through counsel, today



when the matter is taken up for hearing, there is no representation for him.

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7. Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

8. From the materials on record, it is seen that the petitioner has filed suit for declaration that suit property ABCD is common pathway and for removal of obstruction made by the respondent. The respondent is contesting the suit by filing written statement. Trial commenced. The petitioner filed proof affidavit. At that stage, the petitioner has come out with the present application for amendment of schedule of property in the plaint. According to the petitioner, in the plaint the Survey Number was not mentioned and boundaries were, by inadvertence, wrongly mentioned. A reading of the amendment now sought for shows that petitioner is seeking amendment of boundaries on three sides and to include the Survey Numbers and amendment of length and breadth of the suit property. By this amendment, the petitioner is seeking to introduce a new case and introduce a new property. If amendment is ordered, the entire character of the suit will be changed. Further, the learned Judge took note of the fact that the petitioner has filed rough sketch along with the plaint and only as per rough sketch, the petitioner



has described the suit schedule property and held that by amendment, the petitioner is introducing a new case. In the present case, Trial has commenced and petitioner has filed proof affidavit also. As per proviso to Order VI Rule 17 of the Code of Civil Procedure, after commencement of Trial only when the petitioner satisfies the Court that inspite of due diligence, he could not file any application for amendment before commencement of Trial, the same can be considered. In the present case, the petitioner has not pleaded and proved that inspite of due diligence, he could not file application for amendment before commencement of Trial. The learned Judge has properly appreciated the provisions of Order VI Rule 17 of the Code of Civil Procedure and also the materials placed before her, dismissed I.A.No.318 of 2012 by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

9.For the above reasons, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

17.11.2021

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Index : Yes / No

Internet : Yes / No



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To

The learned District Munsiff,
Thiruvallur.

C.R.P. (NPD) .No.527 of 2015



V.M.VELUMANI, J.

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17.11.2021