



CRP (PD) No.2663 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2663 of 2021
and CMP No.19635 of 2021

Komarakkounder (Died)

1. Subramani

... Petitioners

Vs

1. Periyasamy

2. Rani @ Indhirani

Kamatchiyammal (died)

3. Sellammal

4. Pavayeeyammal

5. Gunasekaran

6. Jothimurugan

... Respondents

Prayer: The Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in IA No.401 of 2020 in O.S.No.248 of 2013, dated 09.11.2020 on the file of the Principal District Munsif Court at Kallakurichi.



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For Petitioner : Ms.M.Priyanka

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ORDER

The plaintiff in O.S.No.248 of 2013 is on revision challenging an order, dismissing an application for amendment of the plaint in IA No.401 of 2020.

2. The original suit is filed for injunction restraining the defendants from interfering with the plaintiff's peaceful possession of the suit property which was described as a manure pit measuring 0.01 cent surrounded by 3 coconut trees and one lemon tree situate in a larger extent of 4.47 cents in S.No.42/1. At trial, when the plaintiff was cross examined, it appears that certain suggestions have been made to the effect that measurements and boundaries have not been clearly mentioned. Thereafter, the plaintiff has come forward with the instant application seeking amendment to introduce the measurement of the manure pit and its exact location.

3. The trial Court found that the plaintiff has not satisfactorily



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explained the delay in filing the application. It was also found that the requirements of proviso to Order VI Rule 17 of C.P.C., regarding post trial amendment has not been satisfied. On the said finding, the learned trial Judge dismissed the application.

4. I have heard Ms.M.Priyanka, learned counsel appearing for the petitioner.

5. Ms.M.Priyanka, learned counsel appearing for the petitioner would vehemently contend that the amendment does not introduce any cause or does not alter the nature of the suit. The cause of action remains the same. Therefore, according to the learned counsel, the trial Court was not justified in dismissing the application which effect seeks only to explain the case of the plaintiff with more clarity.

6. I am unable to countenance the submission of the learned counsel. Proviso to Order VI Rule 17 of C.P.C., prohibits the very allowing of an application for amendment, unless the plaintiff shows that he could



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not have filed the application in earlier point of time, despite exercise of due diligence. The affidavit filed in support of the application for amendment is bereft of any reasons as to why the application has not been filed earlier in point of time. The claim that only after cross examination of the plaintiff, it was found that measurements and boundaries were not given, in my opinion, is neither a valid reason nor valid explanation for not seeking amendment in earlier point of time. I, therefore, do not find any material irregularity or illegality in the order, dismissing the application for amendment. The Revision therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.12.2021

vum

Index: Yes/No

Speaking order / Non speaking order

To:

1. The Principal District Munsif Court,
Kallakurichi.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

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