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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2322 of 2020

and

C.M.P.No.14609 of 2020

Ranganayagi

...Petitioner/Plaintiff

Vs

Mayilsamy

...Respondent/Defendant

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 17.07.2020 against I.A.No.511 of 2019 in O.S.No.209 of 2013 on the file of District Munsif Court at Dharapuram.

For Petitioner : Mr.R.Rajarajan.

For Respondent : No appearance.

O R D E R

This Petition is filed seeking to challenge the order passed in I.A.No.511 of 2019 in O.S.No.209 of 2013 passed by the Learned District Munsif, Dharapuram on 17.07.2020.

2.The Learned Counsel for the Petitioner submitted that the Petitioner filed Suit in O.S.No.209 of 2019 seeking the relief of declaration of title in respect of the Suit property and for the consequential relief of temporary injunction in respect of the Suit property. The Petitioner filed I.A.No.511 of 2019 for amending the plaint for the reason that the Survey number had been wrongly typed in the plaint body and in the description of the property. This is only a typing mistake and is due to oversight and inadvertence. However, this Petition came to be dismissed by the Learned District Munsif, Dharapuram for the reason that the Petitioner has already filed amendment Petition and in that amendment Petition, this amendment was not sought.

3.It is the further submission of the Learned Counsel for the Petitioner that the failure to incorporate the amendments now sought, in the earlier amendment petition is again a mistake committed by oversight and because of the mistake committed by oversight, the rights of the Petitioner cannot be depressed. If



the proposed amendment is not permitted, even if the Petitioner gets Judgment and decree in her favour, that cannot be effectively implemented. Therefore, he prayed for setting aside the order of the Learned District Munsif, Dharapuram and for allowing the amendment Petition.

4. Considered the submissions of the Learned Counsel for the Petitioner and perused the records.

5. It is seen from the details given in the amendment Petition that survey number of the Suit property has been omitted and wrongly given. Now these mistakes are sought to be rectified by the amendment. This Petition was dismissed for the reason that in the earlier amendment Petition filed in I.A.No.1127 of 2018, this amendment was not asked. Following the principle that "the law will assist those who are vigilant and not to those who sleep over their rights", the Learned District Munsif, Dharapuram dismissed the Petition.

6. There is no quarrel over this legal maxim. However, we have to consider the interest of the parties. The Petitioner should have sought this amendment in the earlier amendment Petition itself. It was not done, obviously, due to negligence and oversight. This Court agrees with the submissions made by the Learned Counsel for the Petitioner that if the proposed amendment is not allowed, even if she gets Judgment in her favour, she will not be in a position to enjoy the fruits of decree. To render substantial justice to the parties, this Court is of the considered view that amendment Petition can be allowed subject to imposing certain costs on the Petitioner.

7. In this view of the matter, the order passed in I.A.No.511 of 2019 in O.S.No.209 of 2013 by the Learned District Munsif, Dharapuram is set aside and this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

8. The Petitioner is directed to pay a costs of Rs.5,000/- to the Respondent. Only on making such payment, the Learned District Munsif, Dharapuram is directed to permit the Petitioner to make suitable amendment as per the details given in the amendment Petition.

9. The Learned District Munsif, Dharapuram is also directed to give opportunity to the Respondent to file additional written statement, if any, and proceed to dispose the matter on merits



and in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif Court,
Dharapuram.
2. The Section Officer,
VR Section,
High Court, Madras - 104.

+1 cc to Mr.R.Rajarajan,Advocate Sr.No.52541

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KK[co]
NSK 26/10/2021