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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2379 of 2021
and
C.M.P.No.18109 of 2021

Kamalaveni .. Petitioner

Vs.

1.Srinivasan

2.Punitah

3.Subbaiyan

4.Jayanthi ..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to call for the records relating to the fair and decreetal order dated 27.11.2020 made in I.A.No.2 of 2019 in O.S.No.32 of 2014 on the file of the Additional District Munsif Court, Kancheepuram and set aside the same.

For Petitioner : Mr.T.Sathiyamoorthy

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ORDER

Challenge in this revision is to the order of the learned Additional District Munsif, Kancheepuram dated 27.11.2020 made in I.A.No.2 of 2019, an application for amendment of the written statement.

2. The suit in O.S.No.32 of 2014 was filed by the plaintiffs seeking a permanent injunction restraining the defendant from interfering with their alleged possession of the suit property. The defendant filed written statement resisting the suit. In paragraph 7 of the written statement, it was stated that the plaintiffs' property is situate on the North of the defendant's property, which was purchased by the defendant under the sale deed dated 30.07.2007 from one Vetrivel.

3. The plaintiffs' evidence is over. A proof affidavit was filed by the defendant as DW1, wherein also the same statement that the suit property is situate on the North of the defendant's property was reiterated. It is at this stage, the defendant has come up with this application seeking amendment of the written statement, claiming that the averment in the written statement

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that the suit property situate on the North of the defendant's property is wrong and it should be shown as South of the defendant's property. This application was resisted on the ground that it is delayed.

4. The learned Additional District Munsif dismissed the application concluding that apart from delay, the petitioner/ defendant has not pleaded as to why this application for amendment could not have been filed despite due diligence, prior to the commencement of the trial, a requirement which is mandatory under Order proviso VI Rule 17 of the Code of Civil Procedure.

5. Heard Mr.T.Sathiyamoorthy, learned counsel appearing for the petitioner.

6. Mr.T.Sathiyamoorthy, learned counsel appearing for the petitioner would vehemently contend that it is only a typographical error and if paragraph 7 of the written statement is read as a whole, it would be very clear that the mentioning of the word 'வடக்கு' is apparently an error.

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7. I am unable to countenance the submission of the counsel for the petitioner. Proviso to Order VI Rule 17 of the Code of Civil Procedure requires a party to show that the application for amendment could not have been filed, despite exercise of due diligence, if the amendment is sought for after commencement of trial.

8. The minimum requirement is for the petitioner to make an averment in the affidavit filed in support of the application for amendment that it could not be filed earlier and error was discovered only later. Such an averment is completely absent in the affidavit filed in support of the application for amendment.

9. I am therefore constrained to uphold the conclusion of the learned trial Judge. The Revision therefore fails and is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

08.11.2021

dsa
Index : No
Internet : Yes
Speaking order

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To

The Additional District Munsif,
Kancheepuram.

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R.SUBRAMANIAN, J.

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