



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 15.04.2021
Delivered On : 24.06.2021

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRP(MD). No.621 of 2019
and
CMP(MD).No.3162 of 2019

Sivakumaran Nair ...Petitioner/Petitioner/Plaintiff
Vs
Jayakumar ... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 10.12.2018 of the learned Principal District Munsif, Kuzhithurai, made in I.A.No.384 of 2018 in O.S.No.121 of 2017 on his file, allowing the said I.A.

For Petitioner : Mr.K.N.Thambi

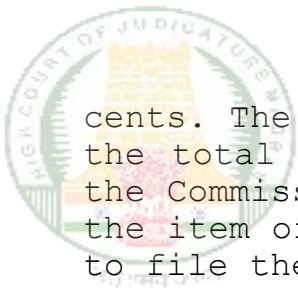
For Respondent : Mr.P.T.Ramesh Raja

ORDER

This Civil Revision Petition directed against the order passed in I.A.No.384 of 2018 in O.S.No.121 of 2017 dated 10.12.2018 on the file of Principal District Munsif Court, Kulithurai in dismissing the petition filed under Order 6 Rule 17 C.P.C.

2. The Revision Petitioner is the plaintiff and he filed the above suit in O.S.No.121 of 2017 claiming the relief of demarcating the southern half of item 1 and 2 of the suit property.

3. The case of the petitioner is that the first item of the suit property originally belonged to his mother Saradha Ammal, that she sold the southern portion of the property admeasuring 12.750 cents to the petitioner vide sale deed dated 02.06.1997, that the said Saradha Ammal also executed another sale deed in respect of northern 12.750 cents and one half of the house to the respondent on the very same day, that the petitioner and the respondents are in possession of their respective shares without any demarcation of the boundaries and that since the non-demarcation of boundary causes much inconvenience in the matter, of effecting improvements and peaceful enjoyment of the petitioner's share, he was forced to file the above suit. It is not in dispute that an Advocate Commissioner was appointed and that the Commissioner after measuring the properties has filed his report on 08.02.2019. Thereafter, the plaintiff has filed the petition in I.A.No.384 of 2018, seeking orders to amend the plaint so as to incorporate the correct extent of the first item of the suit property as 28 cents instead of 25.5



cents. The petitioner's further case is that though he has mentioned the total extent of 1st item of the suit property as 25.500 cents, the Commissioner has reported that 28 cents of land was available in the item of the suit property and that therefore, he was constrained to file the above petition.

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4. The respondent has taken a stand that plaint cannot be amended on the basis of the Commissioner's Report and that if the proposed amendments are allowed the character of the suit will be changed.

5. The learned counsel for the Revision Petitioner would submit that the petitioner has not filed the petition for amendment on the basis of the report of the Commissioner, but based on the fact that subsequent to filing of the suit, it has been found that the actual extent of the property is 28 cents.

6. Whether 25.500 cents is available or 28 cents of land is available in Item 1 of the suit property and in case, if 28 cents is available, whether the parties to the suit are having title over the entire extent of that land are the aspects that can be gone into only during trial. The merits of the proposed amendments cannot be gone into at this stage and the same can be enquired into at the main suit.

7. Since the petitioner has sought for amendment to mention more extent of land, as rightly contended by the learned counsel for the Revision Petitioner, no prejudice would be caused to the respondent, if the proposed amendments are allowed. Moreover, as rightly pointed out by the Revision Petitioner's side, the respondent has not raised any other valid and serious objection for the proposed amendments. But the trial Court, by holding that since a larger area is available on land that would not entitle the plaintiff any right and hence, he cannot amend the plaint and that the petitioner's prayer for amendment on the basis of the Commissioner's Report is not legally permissible, dismissed the petition.

8. More-over, the trial Court, before trial, cannot presume that the extent given in the plaint to be the correct extent and thereby, deny the opportunity for the petitioner to amend the plaint and it would be unreasonable if such formal amendment are not allowed and there would be multiplicity of proceedings. As already pointed out, the above aspects are matter for trial and hence the decision of the learned trial Judge in dismissing the amendment petition is not good in law and that the same is liable to be set aside.

9. In the result, this Civil Revision Petition is allowed and dismissed in I.A.No.384 of 2018 in O.S.No.121 of 2017 dated <https://hccresonline.gov.in/services>



10.12.2018 on the file of Principal District Munsif Court, Kulithurai is set aside. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-II)

/ /2021

Sub Assistant Registrar(CS)

kmm

To:

The Principal District Munsif, Kuzhithurai.

+1 CC to M/s.K.N.THAMBI, Advocate (SR-20213[F]dated 25/06/2021)

C.R.P. (MD) No.621 of 2019

24.06.2021

RD(16.07.2021) 3P 3C