



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (MD) No.1765 of 2014

and

M.P (MD) No.1 of 2014

WEB COPY

M.K.Samsudheen ... Petitioner/Petitioner/Plaintiff

Vs.

1.Meena

2.A.Madhavan ... Respondents/Respondents/ Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 16.04.2014 passed in I.A.No.96 of 2014 in O.S.No.162 of 2006 on the file of the Additional District Munsif Court, Lalgudi.

For Petitioner : Mrs.J.Maria Roseline

For 2nd Respondent : Mr.A.Arunprasad

O R D E R

The Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 16.04.2014 passed in I.A.No.96 of 2014 in O.S.No.162 of 2006, on the file of the Additional District Munsif Court, Lalgudi, dismissing the petition filed under Order VI Rule 17 of the Code of Civil Procedure, seeking for amendment of pleadings.

2.The brief facts of the case :

The case of the petitioner is that he had purchased the suit property from his brother by name, Liaket Ali, under a sale deed dated 22.01.2001, measuring to an extent of east to west 53 feet, north to south 20 feet. However, in the plaint, he had mistakenly given the measurements as 22 feet instead of 20 feet due to typographical error. Hence, the petitioner has filed a petition seeking for amendment.

3. The contesting second respondent had filed a counter-affidavit stating that the petition filed for amendment cannot be accepted, since it was filed two years after the appointment of Advocate Commissioner petition was allowed and at the stage when the case was posted for cross examination of P.W.1.

4.The Trial Court after hearing both the parties had dismissed the petition. However, had granted liberty to the petitioner to restrict the extent at the time of trial, as there is no variation in the boundaries with regard to the property to which the amendment is sought in the petition.



5. Aggrieved by the order, the petitioner has filed the Civil Revision Petition before this Court.

6.The learned counsel for the petitioner would submit that the mistake has crept in the plaint due to a typographical error and that has also been missed by the petitioner. She would further submit that it is not a case where the petitioner is seeking for extension of boundaries, whereas, the petitioner has restricted the measurements. Though liberty is granted the petitioner to clarify the same during evidence, it will not serve the purpose of the case since the mistake has crept in the pleadings and the measurements have been given wrongly. She would further submit that the amendment sought for would not change the nature of the suit and no prejudice will also be caused to the respondents and thereby she would seek to set aside the order. She would also reiterate that the respondent's interest may also be protected by liberty to file additional written statement with regard to the amendment.

7.Per contra, the learned counsel for the second respondent would submit that the petition seeking amendment had been filed belatedly at the stage of trial. The trial court finding that the petitioner had not shown due diligence, has rightly dismissed the petition, however, granting liberty to the petitioner to clarify the same during trial. He would further submit that the Court had earlier appointed an Advocate Commissioner and the Advocate Commissioner had measured the extent within the boundaries of the petitioner and at this stage if the petition for amendment is allowed, the petitioner will take advantage of the earlier report, which would cause prejudice to the respondents. He would further submit that if in the event of the Court allowing the petition for amendment, the earlier report of the Advocate Commissioner should be scrapped and fresh warrant should be reissued to the Advocate Commissioner to file a report after measuring the entire extent of properties belonging to the petitioner and the respondents and the respondents/defendants should be given opportunity to file additional written statement and adduce evidence in respect of the report of the Advocate Commissioner.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.The petition for amendment has been filed at the stage of examination of witness. The Trial Court rightly finding that the petitioner has not shown due diligence has dismissed the petition. However taking into consideration the facts of the case, the petitioner had stated that though in the plaint he had mistakenly given measurement as 22 feet his claim is actually in respect of 20 feet. It is not the case seeking for larger extent but he is only restricting his claim. It is the case of the respondent that as per earlier Advocate Commissioner's report the extent of the property of the petitioner/plaintiff alone was measured and the



extent of property of the defendant was not measure and thereby it would cause prejudice to him.

10. This Court is of the opinion that in order to serve the interest of justice amendment sought for can be allowed on the following terms :-

i) the Trial Court shall re-issue warrant to the earlier Advocate Commissioner and the report shall be filed after measuring the entire area belonging to the plaintiff and the defendant.

ii) The respondent/defendant shall be afforded opportunity to file additional written statement and to give his objections if any in respect of the fresh report.

11. With the above observation, the Civil Revision Petition stands disposed of. No costs. Consequently connected miscellaneous petition is also closed. Since the suit is of the year 2006, the learned Additional District Munsif, Lalgudi, is directed to accord priority and dispose of the suit on merits and in accordance with law, as expeditiously as possible, preferably, within a period of nine months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Per.Admn)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Rm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Additional District Munsif Court,
Lalgudi.

C.R.P. (MD) No.1765 of 2014
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