



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.06.2021

Delivered on : .12.11.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.R.P.(MD)No.778 of 2018

and

C.M.P.(MD)No.3441 of 2018

D.Pasupathy Lakshmanan

... Petitioner

Vs.

1.Padmavathy

2.G.Manoharan

3.Kailasanathar Kovil

Rep. through

The Executive Officer,

Kokirakulam.

Tirunelveli District.

... Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal dated 14.12.2017 passed in I.A.No.238 of 2017 in O.S.No.156 of 2012 on the file of the II Additional District Munsif Court, Tirunelveli.

For Petitioner : Mr.V.Meenakshi Sundaram

For R1 and R2 : Mr.H.Arumugam

For R3 : Mr.C.Guhaseelarupan

ORDER

This Civil Revision Petition is filed against the order dated 14.12.2017 passed in I.A.No.238 of 2017 in O.S.No.156 of 2012 on the file of the II Additional District Munsif Court, Tirunelveli.

2.The first revision petitioner is the plaintiff in the original suit and the petitioner in the I.A Petition. The respondents herein are the defendants in the original suit and the respondents in the I.A. Petition.

3.The petitioner filed a suit in O.S.No.156 of 2012 for mandatory injunction and for permanent injunction. In the suit, the petitioner filed a petition in I.A.No.238 of 2017, under Order 6 Rule 17 and 151 C.P.C., for permission to carry out amendments in the plaint. That petition was dismissed by the trial Court. Against which, the petitioner has approached this Court by way of this Civil Revision Petition.



4.Brief substance of the petition in I.A.No.238 of 2017, is as follows:-

The suit was filed to remove the windows and sunshades constructed by the first respondent, to remove the wall constructed by the third respondent and for permanent injunction. The suit property belonged to the petitioner and he constructed a house and is residing in the house and the western side of the house is a vacant site in Survey No.TS 1108. In that vacant site, the first respondent has encroached and has constructed windows and sunshades. The first respondent is claiming the suit property as if it is situated in T.S.No.1109/13 and claiming the same as his own land and an issue has to be framed whether the land belong to the petitioner or the first respondent. The vacant site was left for the own use of the plaintiff, but, in the plaint the lane was wrongly mentioned as a common lane, which is against the case of the plaintiff. The plaint schedule property is to be altered, so, as to specifically mentioned the individual encroachments, hence, the plaint has to be amended.

5.Brief substance of the counter in I.A.No.238 of 2017, is as follows:-

The main issue in the case is regarding a lane between the petitioner and the respondents' property. In the plaint, the petitioner claimed the lane as a common lane, now, to withdraw the admissions made in the plaint, the petitioner is trying to amend the plaint and is trying to introduce the lane as his own lane. The respondent filed the written statement on 09.07.2010. But, the plaintiff did not take any action to amend the plaint for the past five years. Only when trial is about to commence, the plaintiff has come forward with a petition for amendment. Only to harass the 82 years old first defendant, the plaintiff has filed this petition and prayed the petition to be dismissed.

6.After hearing both sides, the trial court dismissed the petition. Against the same, the revision petitioner has preferred this revision on the following grounds:-

The amendment petition was dismissed only on the ground of delay. The title of the plaintiff in T.S.No.1108/10 is specifically denied by the defendants and hence, the prayer has to be amended. The amendment was completely based on the plan and report of the Commissioner. The trial Court failed to consider that the proposed amendment in the description of the suit scheduled property will not change the nature and character of the suit. Even post trial amendment can be allowed under Section 153 of C.P.C, and to avoid multiplicity of proceedings, the suit has to be amended. The petitioner came to know about the situation only after the filing of the Commissioner report and the delay can be compensated by way of cost. Instead of filing another suit, the petitioner may be permitted to amend the plaint.



7. On the side of the revision respondent, it is stated that the amendment proposed by the petitioner will completely change the nature of the suit. The entire schedule of property will be changed and new properties will be introduced in the schedule of property. There is a delay of five years in filing the petition. The ownership of the lane is in dispute, the original claim of the plaintiff is that the lane is a common lane and the wall is a common wall. Now, only to remove the admissions made in the plaint, the revision petitioner has come forward with this petition. When the schedule of property has to be altered and when the prayer itself has to be altered, the very nature of the suit will be changed.

8. On the side of the revision respondents, it is stated that even in the other case filed by the respondent in O.S.No.159 of 2012 the revision petitioner herein has admitted that the suit lane is a common lane. The petitioner cannot be allowed to withdraw the admissions made in the plaint. A judgment of the Hon'ble Supreme Court reported in **2015-10-SCC-203 [Ram Niranjan Kajaria and others Vs. Sheo Prakash Kajaria and others]** is cited.

9. The petitioner wants to carry out the following amendments :-

i) To remove the first 3 lines in para - 4 of the plaint and to insert the following "On the western side of plaint schedule property the house of 1st defendant is situated. In between the houses belonged to the plaintiff and 1st defendant, there is a vacant site like a lane exclusively belonged to plaintiff herein".

ii) To remove the first prayer and to insert "granting mandatory injunction directing the first defendant to remove the encroachment stated in the second schedule of this plaint within a particular date fixed by this Court, failing of which, this Court may remove the same"

iii) To remove the second prayer and to insert "granting mandatory injunction directing the first defendant to remove the encroachment stated in the third schedule of this plaint within a particular date fixed by this Court, failing of which, this Court may remove the same"

(iv) To delete the third prayer and to amend the same as follows:-

"granting mandatory injunction directing the third defendant to remove the encroachment stated in the fourth schedule of this plaint within a particular date fixed by this Court, failing which, this Court may remove the same. "

v) "To remove the entire suit property and to replace the same with in the four schedule of properties.



10. Whether the plaintiff is having any right in the lane is the main issue to be decided in the suit. The first amendment sought for by the petitioner in this petition is against the original plea of the petitioner. The revision petitioner wants to amend the suit schedule property by completely removing the schedule of property mentioned in the plaint and is trying to introduce new four schedule of properties.

11. In the original schedule of property, the western side of the suit property in T.S.No.1108 was described as "lane and the house of the first defendant". The petitioner then amended the same in I.A.No.22/2015, dated 06.02.2015. Now, the first schedule property was mentioned as S.No.1108/2, western boundary was mentioned as the house of Jeganathan and others. Door No.3/1, the second schedule property was mentioned as the common wall. The eastern boundary was mentioned as the windows constructed by the first defendant. The third schedule property is mentioned as the North-West corner of the first schedule property. The fourth schedule property is mentioned as the wall constructed by the defendant on the North boundary of the first schedule property. The change in the description of the property will change the entire character of the suit property. The new description of the property is not clear whether the property of the defendants is situated on the western side or on the eastern side or on the northern side of the plaintiff's property. The place of encroachment is vague. The amendment sought for by the petitioner may create only confusion in the suit.

12. In the above circumstances, the amendment sought for by the petitioner will change the entire nature of the suit and hence, the amendment petition is not maintainable. For the above reasons, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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

1.The II Additional District Munsif,
Tirunelveli.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D. NALLATHAMBI, Advocate(SR-34492[F] dated

C.R.P(MD)No.778 of 2018

12.11.2021

MGJ/SKN(26.11.2021) 5P 5C