



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1884 of 2021

and

C.M.P(MD) No.10149 of 2021

WEB COPY

S.Thirumalai Chamy ... Petitioner/Petitioner/Plaintiff
Vs.

1.R.Palanisamy

2.R.Manohar @ Subbaiah

3.R.Chandran

4.R.Mohan

5.R.Annasami @ Anbazhagan

... Respondents/Respondents/
Defendants

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 22.10.2021 made in I.A.No.6 of 2020 in O.S.No.204 of 2009 on the file of the Additional District Munsif Court, Sankarankovil.

For Petitioner : Mr.I.Pinaygash

ORDER

The plaintiff, whose petition to amend the plaint has been rejected, is before this Court challenging the said order.

2.The facts in brief are as follows:-

(i) The petitioner herein, who is the plaintiff, had filed the suit in O.S.No. 204 of 2009 on the file of the learned Additional District Munsif, Sankarankovil, for the reliefs of declaration and permanent injunction. The suit schedule property has been described to an extent of 80 cents in Survey No.378/12A within the specified boundaries.

(ii) The defendants had filed their written statement *inter alia* denying the contentions raised in the plaint and submitting that the father of the plaintiff and the father of the defendants are brothers, who were the children of Arumugam Nadar. They have contended that their grandfather Arumuga Nadar had got the property assigned in the name of the plaintiff 's father, since he was the eldest son and the said property is not a self acquired property of the plaintiff's father. The defendants have very clearly stated that the defendants had nothing to do with the suit property. The property comprised in survey No.378/12A2 and 378/12B have not been encroached by the defendants and neither did they interfere in the possession. The property comprised in



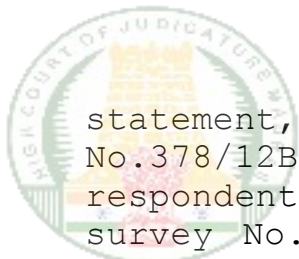
Survey No.378/12A1 belongs to the defendants. These properties have been sub divided from Survey No.378/12A. In the lands in Survey No.378/12A1, the first defendant had already constructed the house in the year 1996 itself and the first defendant is assessed to tax and electricity connection has also been obtained in his name. The second defendant has also constructed the house in Survey No.378/12 A1 in the year 2004 and similarly the third defendant had constructed the house in the year 2009. The defendants have clearly stated that they have no interest in the property comprised in survey no.378/12A2 and 378/12B and neither have interfered in the possession of the same. Pending the suit, the plaintiff/petitioner has come forward with an application in I.A.No.6 of 2022 to amend the survey number of the suit schedule property. The petitioner would contend that instead of giving the correct survey number i.e., 378/12A1, the petitioner has wrongly described that the suit property has been comprised in survey No.378/12B. He would state that this discrepancy came to his knowledge only recently and therefore, the same has to be corrected.

(iii)The respondent have filed a counter statement *inter alia* contending that the amendment is only an attempt to get over the evidence given by the plaintiff in his cross examination as P.W1. The petitioner has clearly stated that post the re-survey, the new survey number for the suit schedule property is R.S.No.378/12A2 and 378/12 B. This sub division has however not been mentioned in the plaint. That apart, the amendment is sought to be introduced after the plaintiff's side examination and marking of documents is over. Therefore, at this stage, the amendment cannot be permitted.

(iv)The learned Additional District Munsif, Sankarankovil, on hearing the parties dismissed the said petition by referring to the admission of P.W.1 in the cross examination, wherein he has clearly stated that his right is only with reference to survey No.378/12A2 and 378/ 12B and no other survey number. Having categorically deposed so, the present petition was not maintainable one. Aggrieved by this order, the plaintiff / petitioner is before this Court.

3.Heard the learned counsel for the petitioner and perused the records.

4. A perusal of records particularly the counter in the impugned interlocutory application would clearly demonstrate that the plaintiff/petitioner has in his cross examination clearly admitted that the plaintiff is the owner and in possession of the property comprised in Survey No.378/12 A2 and 378/12 B and that he has no right in any other survey number. Having made such a



statement, the petitioner has now come forward to amend the survey No.378/12B as 378/12A1. In the written statement filed by the respondents herein, the respondents have clearly stated that the survey No.378/12A1 belongs to the defendants and that they have not interfered in the possession of the lands comprised in survey No.378/12A2 and 378/12B. This written statement has been filed as early on 22.04.2010. The present petition for amendment is filed, when P.W.1 is in the box. Therefore, the post trial amendment cannot be allowed at this stage and the Court below has rightly dismissed the petition.

5.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp

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,
Sankarankovil.

+1 CC to M/s.I.PINAYGASH, Advocate (SR-36965[F] dated 02/12/2021)

C.R.P (MD) No.1884 of 2021
01.12.2021

PS (CO)
SB(11.01.2022) 3P 3C