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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 23.07.2021

Delivered On : 11.08.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R. THARANI

C.R.P. (PD) (MD) .No.2417 of 2018

and

C.M.P. (MD) .No.10785 of 2018

K.Subramaniyan

... Petitioner/Petitioner/Defendant

Vs.

K.Dhievesenathipathy

... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Article 227 of Constitution of India, to call for the records relating to the impugned fair and decreetal order in I.A.No.830 of 2018 in O.S.No.155 of 2013 dated 01.10.2018 on the file of the Principal Sub Judge, Karur and to set aside the same.

For Petitioner	: Mr.Karthik For Mr.B.Saravanan
For Respondent	: Mr.R.Vijayakumar

ORDER

This petition has been filed to set aside the order in I.A.No.830 of 2018 in O.S.No.155 of 2013 dated 01.10.2018 on the file of the Principal Sub Judge, Karur.

2.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.155 of 2013 seeking permanent injunction. Pending suit, the petitioner herein has filed a petition in I.A.No.830 of 2018 to amend the written statement.

3.Brief substance of the petition in I.A.No.830 of 2018 reads as follows:

The plaintiff filed the suit for creating a charge over the suit B schedule property. But only on 03.10.2017, the petitioner came to know that the nature of A schedule property was wrongly typed in the written statement. A schedule property is a self acquired property. But it was wrongly typed as ancestral property. To rectify the mistake crept in the written statement, the petitioner has filed this petition seeking permission to amend the written statement.



4.Brief substance of the counter in I.A.No.830 of 2018 reads as follows:

The suit was filed in the year 2013. Only after five years, the petitioner has come forward with this petition. There was an earlier suit between same parties in O.S.No.20 of 2015 on the file of the District Court, Karur wherein the petitioner herein has filed a detailed written statement admitting the property as ancestral property. Now he wanted to alter the pleadings. In paragraph no.13 of the written statement, it was stated that the earlier suit in O.S.No.29 of 2012 was still pending. The petitioner cannot take a different stand. The admission already given in O.S.No.29 of 2012 operates as estoppel.

5.There was no oral evidence on both the sides and the respondents marked document as Ex.R1 to Ex.R3. After hearing both sides, the trial Court dismissed the petition. Against which, the revision petitioner has preferred this Civil Revision Petition.

6.On the side of the revision petitioner, it is stated that the statement in the written statement was made by inadvertence and the rejection of the amendment will cause prejudice to the rights of the petitioner. The statement cannot be construed as admission.

7.On the side of the respondent, it is stated that these admissions are not made by way of inadvertence. In the earlier suit, the same admission was made by the petitioner. After five years from the date of plaint, the petitioner cannot be permitted to amend the written statement and take a contrary plea and prayed the petition to be dismissed.

8.It is seen that the suit in O.S.No.29 of 2012 was filed by the son of the petitioner. The petitioner has appeared in the suit as the second defendant and he filed a written statement admitting that the property was purchased in the name of Kuppusamy from out of joint funds and the property is a joint family property. In Paragraph No.13, only the description of the property was denied.

9.In the plaint in O.S.No.29 of 2012 in paragraph no.5, it is stated that the property is an ancestral property that belongs to one Kupusamy. In the written statement filed by the revision petitioner in O.S.No.29 of 2012, in paragraph no.4, the plaint paragraph Nos.5 and 6 were admitted as correct. Except the age of the first defendant and the marriage, the paragraph nos.5 and 6 were admitted. Now the revision petitioner is trying to create a new case. The petition was filed after five years from the date of filing of the suit. There is no merits in the petition.

10.Hence, there is nothing sufficient enough to interfere in the order passed in I.A.No.830 of 2018 in O.S.No.155 of 2013 dated 04.02.2018 in the file of the Principal Sub Judge, Karur. This Civil



Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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 Principal Subordinate Judge,
Karur.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-25849[F] dated 11/08/2021)

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-25971[F] dated 11/08/2021)

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RS (26.08.2021) 3P 4C