



WEB COPY



CRP.No. 249 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM :

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No. 249 of 2019
and
CMP.No.2026 of 2019

S.Kathirvel

.. Petitioner

Versus

1. Rajakumar
2. The State,
Represented by its District Collector,
Perundurai Road
Erode District-11.
3. The Revenue Divisional Officer
Erode Revenue Division Office
Perap Road, Erode-1.
4. The Tahsildar
Erode Taluk,
Now convert to Kodumudi Taluk
Erode District.
5. The Superintending Engineer
Tamil Nadu Electricity Board
Erode Division, E.P.N. Road, Erode.
6. The Executive Engineer
Tamil Nadu Electricity Board
Erode Division (South)
E.P.N. Road, Erode.



CRP.No. 249 of 2019

7. The Assistant Engineer
Tamil Nadu Electricity Board
Tamaraipalayam Office
Annamar Koil Power House
VEllottamparapu Post
Kodumudi Taluk
Erode District.

8. V.S. Duraisamy

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 19.01.2018 in I.A.No. 531 of 2017 in O.S.No.39 of 2013 on the file of the District Munsif Cum Judicial Magistrate Court, Kodumudi.

For Petitioner	: Mr.K. Karthikeyan
For R1	: Mr.M.Guruprasad
For RR 2 to 4	: Mr.B.Tamilnidhi Additional Government Pleader
For RR 5 to 7	: Mr.V.Viswanathan
For R8	: No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 19.01.2018 in I.A.No. 531 of 2017 in O.S. No.39 of 2013 on the file of District Munsif Cum Judicial Magistrate Court, Kodumudi.



CRP.No. 249 of 2019

2. The revision petitioner herein is the plaintiff and the respondents herein are the defendants in the original suit proceedings.

3. The learned counsel appearing for the revision petitioner submitted that the plaintiff had instituted the suit for declaration to declare that the plaintiff and the 8th defendant are the owners of the land in Survey No.303 measuring 57 cents and for other reliefs. Pending suit, the plaintiff has filed I.A.No. 256 of 2017 stating that he had not properly valued the suit and the court fee paid was not proportionate to the suit relief and therefore prayed for amendment of the pleadings in the plaint. However, the said application was dismissed on 28.07.2017. Thereafter, the present application in I.A. No. 531 of 2017 has been filed by the plaintiff for the same relief of amending the pleadings in the plaint. It is to be mentioned that as against the order dated 28.07.2017 passed in the earlier application in I.A. No. 256 of 2017, the plaintiff has not filed any appeal. The plaintiff, without filing any appeal has filed the instant application for the same relief.

4. The learned counsel appearing for the petitioners submitted that the plaintiff is the one who has filed the suit for declaration and other reliefs.

The plaintiff, after instituting the suit, has come to know that the suit has not



CRP.No. 249 of 2019

been valued properly. Therefore, I.A. No. 256 of 2017 was filed for amendment, but it was dismissed on 28.07.2017. It is true that the plaintiff has not filed any appeal as against the order dated 28.07.2017 in I.A. No. 256 of 2017. According to the learned counsel, the earlier order dated 28.07.2017 was passed on the ground that there is no requirement to amend the pleadings in the plaint for the present. Therefore, there is no bar for the plaintiff to file the present application. The plaintiff is ready to pay the requisite court fee and therefore, an opportunity has to be given to the plaintiff to amend the pleadings in the plaint, without harping on technicalities. The plaintiff, having admitted the deficit court fee, cannot succeed in getting a decree in the suit. Therefore, it is necessary for the plaintiff to amend the pleadings and he prayed for allowing this revision petition.

5. The learned counsel appearing for the respondents submitted that after completion of the examination of witnesses, to fill-up the lacuna the instant application has been belatedly filed. It is further stated that immediately after the institution of suit, the first defendant has filed written statement stating that the value of the suit is improper. After three years of instituting the suit, in the year 2016, the plaintiff examined himself as PW1 before the trial court in which he has stated that even in the year 2013, the



CRP.No. 249 of 2019

value of the suit property will be approximately Rs.20 to Rs.25 lakhs.

However, he has valued the suit only for Rs.6 lakhs. Further, in I.A. No. 256 of 2017 was filed thereafter for amendment of the pleadings and it was dismissed by this Court on 28.07.2017. The plaintiff, without filing any appeal thereof, is estopped from filing the instant application for the very same relief. The trial court is therefore right in dismissing the instant application. The plaintiff has to succeed or loose on the basis of the pleadings made in the plaint at the first instance. The plaintiff cannot be permitted to blow hot and cold in indicating the value of the suit. Therefore, the above civil revision has to be dismissed.

6. The revision petitioner has filed the suit in O.S.No.39 of 2013 before the District Munsif Cum Judicial Magistrate Court, Kodumudi for declaration and other relief. After commencement of the trial, PW1 and DW1 were examined. At this juncture, the petitioner/plaintiff filed I.A.No.256 of 2017 seeking to amend the plaint with respect to the court fee already paid. The contention of the petitioner/plaintiff is that the guideline value of the property was erroneously mentioned in the plaint and therefore, to pay the correct court fee proportionate to his claim, he is intending to pay the enhanced the court fee. The said application was strongly objected by stating



CRP.No. 249 of 2019

that after examination of the witnesses, the said application was filed by the and the application was filed to fill-up the lacuna. The trial court dismissed the application in I.A. No. 256 of 2017 on 28.7.2017 against which the plaintiff has not filed any appeal. While so, the present application in I.A. No. 531 of 2017 for the same relief of amendment.

7. On considering the submissions made by the learned counsel on either side and on a perusal of the records, it reveals that the suit was filed in the year 2013 for declaration, mandatory injunction, permanent injunction and other consequential reliefs in respect of the suit property. It is also seen that the amendment sought to be made is with respect to payment of court fee and not to alter the pleadings. The plaintiff, having admitted that the suit was not properly valued, expressed his readiness to pay the proper court fee proportionate to the relief sought for in the suit. If the plaintiff is permitted to pay the proper court fee, it will not alter or vary the pleadings in the suit. Therefore, notwithstanding the technicalities, an opportunity has to be given to the plaintiff to pay the proportionate court fee. If at all, the defendants have any objection, on the enhanced court fee that the plaintiff pay, they are entitled to raise objection by filing additional written statement .



CRP.No. 249 of 2019

8. Accordingly, the Civil Revision Petition is allowed and the impugned fair and decretal order, dated 19.01.2018 in I.A.No. 531 of 2017 in O.S.No.39 of 2013 passed by the District Munsif-Cum-Judicial Magistrate Court, Kodumudi, is hereby set aside. The trial Court is directed to permit the plaintiff to amend the plaint within a period of three months. After amending the plaint, the defendants shall be given an opportunity to file their additional written statement. Thereafter, the trial Court is directed to dispose of the suit within a period of six months thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

18.10.2022

msm

Index : Yes/No

Speaking Order : Yes/No



CRP.No. 249 of 2019

WEB COPY

- To
2. The District Collector,
Perundurai Road
Erode District-11.
 3. The Revenue Divisional Officer
Erode Revenue Division Office
Perap Road, Erode-1.
 4. The Tahsildar
Erode Taluk
Now convert to Kodumudi Taluk
Erode District.
 5. The Superintending Engineer
Tamil Nadu Electricity Board
Erode Division
E.P.N. Road, Erode.
 6. The Executive Engineer
Tamil Nadu Electricity Board
Erode Division (South)
E.P.N. Road, Erode.
 7. The Assistant Engineer
Tamil Nadu Electricity Board
Tamaraipalayam Office
Annamar Koil Power House
VELlottamparapu Post
Kodumudi Taluk
Erode District.



WEB COPY



CRP.No. 249 of 2019

T.V.THAMILSELVI, J.

msm

C.R.P.(PD).No. 249 of 2019

18.10.2022