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CRP.No.3140 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Civil Revision Petition [PD] No.3140 of 2015

& M.P.No.1 of 2015

M.Kanthasamy

... Petitioner

..Vs..

1. Mutha Gounder @ R.Subramani
2. S.Palanisamy

... Respondents

Prayer: Civil Revision Petition has been filed under 227 of Constitution of India against Order dated 20.04.2015 made in I.A. No. 1239 of 2014 in O.S.No.145 of 2011 on the file of the District Munsif, Salem.

For petitioner : Mr.M.Saravanakumar

For respondents : R1 – Died
R2 – No appearance



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ORDER

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Challenging the dismissal of the application filed for amendment in I.A. No. 1239 of 2014 in O.S.No.145 of 2011, the present revision has been filed.

2. The brief averments of the application filed by the petitioner :

The petitioner is the plaintiff in the above suit. The plaintiff has filed the suit for permanent injunction against the defendants. When the proof affidavit for chief examination was read over to the plaintiff, the plaintiff came to know that a meager portion of lands which was already acquired by the Government for the purpose of forming NH47 Highways Road and 2 feet channel rights of the defendants on the Western Edge of the first item of the suit property were included in the first item of the suit property. The above particulars were not provided to his counsel due to illiteracy of the petitioner. As the proposed amendment will not change the nature, cause of action and character of the suit in any aspects, prayed for allowing the application.



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3. Denying the averments in the application, the contention of the respondents in the counter is that the application filed by the petitioner is not maintainable after the commencement of trial and when the case is posted for further evidence of the plaintiff, the application has been filed only to protract the proceedings and that too after several admissions made by the petitioner during his cross examinations. If the amendment now sought for is allowed, it will change the description of the properties. Since, the suit is filed for permanent injunction, without seeking the relief of declaration, proposed amendments, cannot be entertained.

4. After considering the submissions of both sides, the Court below dismissed the application against which the present Civil Revision Petition has been filed.

5. Heard the learned counsel for the petitioner and perused the materials available on record.



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6. The trial Court while dismissing the I.A.No.1239 of 2014 pointed out that the petitioner has sought amendment of the description of measurement of the schedule mentioned property and P.W.1 has categorically admitted in his cross examination that even before filing of the suit, the National Highways has formed four ways road and the Government has acquired few portion of the land in Survey No.402/9, Survey No.402/8, 402/8A and 435/1G1, when the roads were formed. Hence, at the time of filing of the suit, the petitioner was aware of the acquisition proceedings and the petitioner, who is well aware of the extent of land in his possession in respect of the suit property and also the extent of land acquired by the Government has not whispered anything about the land acquired by the Government and compensation proceedings in the plaint filed by the him and has not enclosed any documents in respect of the above proceedings. The trial Court observed that it is the obligation of the petitioner, who filed a suit for permanent injunction, has to give particulars as to the actual extent of land in his possession. Hence, the trial Court viewed that only in order to set right his admission in his cross examination, the petitioner has filed the application for amendment which is not maintainable and dismissed the



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application. In my considered opinion, the Court below has considered the amendment application in detail and rightly dismissed the application, which requires no interference.

7. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is dismissed. No costs.

05.04.2022

Index:yes/no

Internet:yes

vrc

To

The District Munsif,
Salem.



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J.NISHA BANU, J.

vrc

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