



C.R.P.(NPD)No.1070 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1070 of 2016
and C.M.P.No.5911 of 2016

Indira Devi

.. Petitioner

Vs.

1.N.M.Haleema

2.Mohammed Ibrahim Satter

3.Aliyul Murthaja

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 15.12.2015 made in C.M.P.No.56 of 2013 in A.S.No.362 of 2012 on the file of the learned XVI Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.B.Harikrishnan

For Respondents : Dr.S.Padma



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ORDER

(The matter is heard through “Video-conferencing”)

Civil Revision Petition is filed against the fair and decretal order dated 15.12.2015 made in C.M.P.No.56 of 2013 in A.S.No.362 of 2012 on the file of the learned XVI Additional Judge, City Civil Court, Chennai.

2.The petitioner is plaintiff in O.S.No.6262 of 2008 and appellant in A.S.No.362 of 2012 on the file of the learned Principal Judge, City Civil Court, Chennai. The petitioner filed the said suit for mandatory injunction directing the respondents to remove the drainage line measuring 1 ½ feet in width and 45 feet in length put up by the respondents over the passage measuring on the East to West 2 feet in width and running North to South 45 feet in length upon the land comprised in old S.No.455, bearing No.443/2, Block No.28, Nungambakkam Village, Egmore, described in the 'B' Schedule property and permanent injunction restraining the respondents from in any manner



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obstructing or preventing the petitioner's right to use the passage described in the suit schedule property. The respondents filed written statement and contested the suit. After trial, the suit was dismissed by the judgment and decree dated 31.11.2011. Against the said judgment and decree, the petitioner filed A.S.No.362 of 2012. In the appeal, the petitioner filed C.M.P.No.56 of 2013 under Order VI Rule 17 of C.P.C., to amend the plaint.

3.According to the petitioner, an inadvertent error had crept in with regard to survey number with respect to common passage mentioning the measurement of width and survey number. The correct width of the common passage is 2 feet 6 inches. The petitioner by mistake typed as width is 2 feet. Similarly, the S.No.443/2 was sub-divided and new survey number is 446/6. The petitioner described survey number as 443/2. This mis-description of survey number and width of the common passage has occurred due to inadvertence and omission. The same is neither wilful nor wanton. The trial Court erroneously dismissed the suit



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holding that survey number mentioned in the plaint is not correct. In view of the same, the petitioner has filed this petition in the First Appeal for amendment and prayed for allowing the amendment.

4.The respondents filed counter statement and denied the averments made in the petition and stated that petitioner filed the present C.M.P., after two years of passing judgment in O.S.No.6262 of 2008 and when the appeal was posted for final hearing, only to drag on the proceedings. The petitioner has no case on merits. In the trial Court, evidence was recorded and documents were marked. After arguments, the trial Court dismissed the suit filed by the petitioner. The petitioner is making an attempt to bring a new cause of action. The respondents are the owners and are having right of title of enjoyment and continuous possession, since from the date of purchase along with all the enjoyment as conveyed and transferred to her by the vendor of the respondents. The suit was filed with clear mentioning of survey number and door number based on which, oral and documentary was recorded and arguments were



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made by the petitioner. Hence, there is no merits in the present petition and prayed for dismissal of the said C.M.P.

5.The learned First Appellate Judge considering the averments in the affidavit, counter statement and judgment in O.S.No.6262 of 2008, dismissed the C.M.P. holding that if amendment is allowed, there will be a clear modification of the case of the petitioner and petitioner has not explained as to why she has not filed petition for amendment before the trial Court.

6.Against the said fair and decretal order dated 15.12.2015 made in C.M.P.No.56 of 2013 in A.S.No.362 of 2012 , the present Civil Revision Petition is filed.

7.The learned counsel appearing for the petitioner contended that the petitioner is rightful owner of the suit schedule property and has right over the passage described in the schedule of the property. The



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respondents' predecessor in title cannot put up any structure over 'B' schedule property mentioned in the sale deed dated 26.02.2003. The learned Judge dismissed the petition erroneously holding that by amendment, the petitioner is introducing a new case. In the report filed by the Advocate Commissioner, the survey number and width of the passage is mentioned as 446/6 and 2 feet 6 inches respectively. Even in Ex.B2, survey number and width is mentioned as such. The petitioner, by inadvertence mentioned wrong survey number and measurement of passage. The same is neither wilful nor wanton. Unless the amendment is ordered, the petitioner will be put to irreparable loss and prayed for allowing the Civil Revision Petition. In support of his contentions, the learned counsel relied on the judgments of this Court reported in **AIR 2007 Madras 78 Full Bench (M/s.Hi Sheet Industries v. Litelon Limited and others)** and **2007 1 MLJ 326 (Kathuri and another vs. Bhaskar and others)**.

8.Per contra, the learned counsel appearing for the respondents contended that the petitioner filed suit for mandatory injunction and



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permanent injunction and in schedule of the property, the petitioner has given survey number as 443/2 and width of passage as 2 feet. Based on the oral and documentary evidence let in, arguments were advanced. The petitioner has now filed C.M.P.No.56 of 2013 in A.S.No.362 of 2012 for amendment of the plaint stating that in Ex.B2, survey number is 446/2 and width is 2 feet 6 inches and by inadvertence, the same was wrongly described in the schedule to the plaint. Ex.B2 and Advocate Commissioner's report were available before the trial Court. The petitioner has not explained as to why she has not filed application for amendment before the trial Court. The trial Court considering oral and documentary evidence and arguments made by the parties, dismissed the suit. If amendment is allowed at this stage, entire character of the suit will be changed and prayed for dismissal of the Civil Revision Petition.

9.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the entire materials on record.



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10. From the materials on record, it is seen that the petitioner is seeking mandatory injunction and permanent injunction in respect of the suit schedule property. In the schedule to the plaint, the petitioner has mentioned survey number as 443/2 and width of the common passage as 2 feet. The petitioner in the appeal has filed present C.M.P. for correction of survey number as 446/6 and width of the common passage as 2 feet 6 inches. According to the petitioner, by inadvertence, the mistake has crept in, in the schedule of the property. On the other hand, it is the case of the respondents that by amendment, the petitioner is seeking to introduce a new case and only to drag on the proceedings, the present C.M.P. is filed, when the appeal was ripe for final hearing. The relief sought for in the C.M.P. is that petitioner is seeking to correct the survey number and width of common passage. It is not the case of the respondents that common passage before the petitioner's property is only S.No.443/2 and S.No.446/6 is away from the petitioner's property. In view of the above, the petitioner is not seeking to introduce a new passage or new property by this amendment. In the property mentioned in the schedule, the



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petitioner wrongly mentioned survey number and width of the common passage. By this, she is not introducing any new case.

11.It is well settled that amendment can be ordered, if a party seeking amendment gives valid, sufficient and acceptable reason and reason for not seeking amendment at the earliest. In view of the above, the order of the learned Judge is erroneous and is liable to be set aside and is hereby set aside. According to the respondents, the petitioner has filed C.M.P. only to drag on the proceedings. The petitioner has filed present C.M.P. after considerable delay. In view of the same, the petitioner has to compensate the respondents for the delay. The petitioner is directed to pay a sum of Rs.3,000/- (Rupees Three thousand only) to the respondents within a period of three weeks from the date of receipt of a copy of this order. On such deposit, C.M.P.No.56 of 2013 in A.S.No.362 of 2012 filed by the petitioner will be allowed. The learned Judge is directed to carry out necessary amendment and proceed further. Considering that the First Appeal is of the year 2012, the learned First



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Appellate Judge is directed to dispose of the First Appeal as expeditiously as possible in any event within three months from the date of receipt of a copy of this order.

12.With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.01.2022

Index : Yes/No
Internet: Yes/No
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To

XVI Additional Judge
City Civil Court, Chennai.

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V.M.VELUMANI,J.

Kj

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