



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.1152 of 2017

and

C.M.P.No.5494 of 2017

T.Vilwanathan

... Petitioner/Petitioner/Plaintiff

Vs.

1.Elumalai

2.Suganthi

...Respondents/Respondents/Defendants

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal order dated 09.09.2016 passed in I.A.No.517 of 2016 in O.S.No.258 of 2009 on the file of the District Munsif Court, Madurantakkam, Kanchipuram District.

For Petitioner .. Mr.N.Nagu Sah

For Respondents .. No appearance



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ORDER

Heard learned counsel for the revision petitioner.

2.The revision petitioner is the plaintiff in O.S.No.258 of 2009 on the file of the District Munsif Court, Madurantagam. The respondents are the defendants.

3.There is no representation on behalf of the respondents, but the names and addresses of the respondents are printed in the cause list. The Registry had put up a note that both the respondents had been served on 27.09.2021 through Court and that private notice had also been served on 25.02.2022. They also been served through the lower Court counsel. These notings are available in the records of this Court. Let me therefore not hold over the Revision Petition and rather pass orders on the basis of the available records.

4.The plaintiff had initially filed a suit in O.S.No.258 of 2009 before the District Munsif Court, Madurantagam, seeking declaration of title to the suit property and for consequential permanent injunction



restraining the defendants from interfering with the peaceful possession.

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In the schedule to the plaint, the property was described as situated at Kancheepuram District, Madurantagam Taluk, Karunguzhi Village in Wet S.No.334/8 measuring 0.03.0 Hectares.

5.The defendants have filed their written statement. Issues will now have to be framed. At that particular stage, the plaintiff filed I.A.No.517 of 2016 seeking amendment of the plaint. The amendment sought, was with respect to the schedule to the plaint. They wanted a further relief also, namely, for declaration of the title of the plaintiff with respect to the property described as schedule A and also for schedule B and for delivery of possession. They had deleted the schedules earlier given and had given a fresh schedule as schedule A and schedule B. They are both again wet lands in Karunguzhi village.

6.In the applications sought to amend the relief sought and also the schedule, it had been stated that after survey, the plaintiff found that the 2nd defendant had encroached into a portion of the property and therefore, the relief of delivery of possession or rather recovery of possession is required to be included and in view of the survey, the correct details of



the property have to be incorporated by giving survey numbers properly.

This application came up for consideration before the District Munsif Court, Madurantagam. By order dated 09.09.2016 the said application was dismissed.

7.The learned District Munsif, was of the view that the amendment sought went beyond the relief sought in the plaint and that the cause of action would change, if the amendment is allowed. I do not think that particular opinion expressed by the learned District Munsif is correct and can be sustained by this Court.

8.The plaintiff filed a suit for declaration of title and for permanent injunction. Pending the suit, the plaintiff had an occasion to survey the land when the plaintiff found that a portion of the property had been encroached by the defendants. Naturally, the relief of permanent injunction cannot be granted since the defendants are in occupation whether lawfully or not of a portion of the property. To that extent, recovery of possession has to be sought and that was one of the reasons why the amendment was filed. The other reason, was to correct the survey number. It is for the plaintiff to establish that she is entitled



for declaration of title with respect to the lands mentioned in the plaint. If she is not able to establish that particular fact whether the survey number is added or not, she cannot get any relief in the suit. She has to establish that she has title over the property and that she is entitled to be declared as the owner of the property and that she must be declared to have a right to enjoy the property. These are averments to be proved. The property must be identifiable and properly described. All these aspects will have to be examined by the District Munsif before passing a judgment with respect to declaration of title. There is no shift in the cause of action, but only a correction made with respect to the survey numbers. The burden is always on the plaintiff to establish title over the newly added or the corrected survey numbers.

9. Therefore, I would interfere with the order of the learned District Munsif, Madurantagam dated 09.09.2016 in I.A.No.517 of 2016 and set aside the same and allow the amendment. The plaintiff may be permitted to allow the plaint as sought for in I.A.No.517 of 2016 and after carrying out necessary amendments, the defendants may be given an opportunity to file additional written statement and thereafter let issues be framed and the parties put to trial.



10. With the above observations, the present Civil Revision
Petition stands allowed. No costs. Consequently, connected Civil
Miscellaneous Petition is closed.

06.04.2022

Internet: Yes/No
Index: Yes/No
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To,
The District Munsif Court, Madurantakam.



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C.V.KARTHIKEYAN,J.

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