



C.R.P.(PD).No.3013 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM

THE HON'BLE MR. JUSTICE **C.V.KARTHIKEYAN**

C.R.P.(PD).No.3013 of 2017

G.Subramanian

... Petitioner

Vs.

Gunasekaran

... Respondent

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order in I.A.No.42 of 2017 in O.S.No.11 of 2016 dated 08.06.2017 on the file of the District Munsif cum Judicial Magistrate at Needamangalam.

For Petitioner : Mr.S.Thiruvengkataswamy

For Respondent : No appearance

ORDER

The defendant in O.S.No.11 of 2016 on the file of the District Munsif-cum-Judicial Magistrate at Needamangalam is the revision petitioner herein.

2.The revision petitioner is deeply aggrieved by the order dated 08.06.2017 in I.A.No.42 of 2017, by which order, the aforementioned

I.A.No.42 of 2017 has been allowed by the District Munsif-cum Judicial Magistrate at Needamangalam.



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3. O.S.No.11 of 2016 had been filed by the respondent herein seeking permanent injunction restraining the defendant therein/petitioner herein from interfering with peaceful possession of the suit property. The suit property has been described in the Schedule as Punja land in Survey No.116A/6 measuring 0.16 cents in 0.06.5 ares and situated at Aadhanur Village, Needamangalam, Nagapattinam District. The four boundaries of the said property had also been given in the schedule to the plaint and it had been stated that the land is situated to the South of the Railway line, to the West of cemetery, to the North of the Punja land of Gangaammal and to the East of Punja land of Subramanian.

4. A written statement had been filed by the present revision petitioner. In the written statement, it had been very specifically stated that the revision petitioner herein had earlier filed O.S.No.29 of 2015 seeking permanent injunction against the respondent herein with respect to the suit property and by judgment dated 15.02.2016 the suit had been decreed on merits and it was therefore stated that the suit filed by the respondent herein with respect to the same suit property is not maintainable.



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5. The parties went to trial and also adduced oral and documentary evidence. The matter was posted for advancing arguments.

6. At that particular stage, the respondent/plaintiff filed an application in I.A.No.237 of 2016 under Order 23 Rule (3) CPC seeking permission to withdraw the suit in O.S.No.11 of 2016 with a further permission to institute a fresh suit on the same cause of action. That application was dismissed by the learned District Munsif-cum-Judicial Magistrate, Needamangalam by order dated 09.02.2017. A specific finding was given to the effect that the said application has been filed when the suit was posted for arguments and hence permission cannot be granted for a fresh suit and substantial evidence has been recorded and it was incumbent on the part of the parties to advance arguments and to permit the Court to analyze evidence.

7. Thereafter, instead of advancing arguments, the respondent herein then filed I.A.No.42 of 2017 under Order 6 Rule 17 CPC seeking to amend the plaint with particular reference to the schedule of the property.



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8. It must be kept in mind that this application had been filed, after the earlier application filed under Order 23 Rule (3) CPC had been dismissed by the Court. This application however was allowed by the District Munsif-cum-Judicial Magistrate, Needamangalam by order dated 08.06.2017 necessitating the filing of the present revision petition.

9. It is extremely unfortunate that even without examining the provisions under Order 6 Rule 17 CPC, the District Munsif-cum-Judicial Magistrate, Needamangalam has thought it fit to allow the application under Order 6 Rule 17 CPC after evidence has been recorded and when the matter was posted for advancing arguments.

10. Order 6 Rule 17 CPC stipulates that no amendment can be introduced post commencement of trial and if at all, any amendment is to be introduced after commencement of trial, then, the parties seeking such amendment should specifically plead that the matters, which were sought to be so amended, were not to their knowledge or even after diligence could not be pleaded in the first instance. The reasoning behind such restriction is understandable since after issued had been framed and after evidence had been recorded and after witnesses had been cross examined



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permitted, it would change the very character of the entire suit and the trial process itself necessitating re-trial of the entire issues.

11. In the instant case, the very same District Munsif- cum-Judicial Magistrate, Needamangalam had dismissed the application under Order 23 Rule (3) CPC holding that it had been filed after evidence has been recorded and when the matter was posted for arguments. However, the application for amendment had been allowed when there was a specific bar for such amendment on an issue, which was to the knowledge of the plaintiff at the time when the suit was instituted. It might be a simple issue of the boundary of the suit schedule of the property, but it should have been specifically pleaded that this amendment was not to the knowledge of the plaintiff at the time when the suit was instituted or before the evidence was recorded.

12. The respondent/plaintiff had been served with Court notice on 11.09.2017. The name and address of the respondent is printed in the cause list. Even on the earlier occasion, there was no representation on behalf of the respondent/plaintiff. It is clear that the respondent/plaintiff is not interested in participating in this proceeding.



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13. However the aforesaid discussions clearly shows that the amendment application should have been dismissed and the parties should have been directed to advance arguments and the Court should have proceeded to pass judgment on the available evidence.

14. Therefore, the order passed by the learned District Munsif-cum-Judicial Magistrate, Needamangalam dated 08.06.2017 made in I.A.No.42 of 2017 is interfered with and is set aside. Amendment sought for cannot be granted after evidence had been recorded and when the suit was posted for advancing arguments.

15. Accordingly, this Civil Revision Petition is allowed with a direction to the District Munsif-cum-Judicial Magistrate, Needamangalam to dispose the O.S.No.11 of 2016 on or before 31.07.2022. No costs.

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Index:Yes/No

Speaking Order : Yes/No

sp/mp



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To
WEB COPY

- 1.The District Munsiff cum Judicial Magistrate,
Needamangalam
- 2.The Section Officer,
VR Section,
Madras High Court.



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C.V.KARTHIKEYAN,J.,

sp/mp

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