



C.R.P.No.1456 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.04.2023

Delivered on 30.06.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1456 of 2021

G.Rajendran

...Petitioner/Petitioner/Plaintiff

-Vs-

T.D.Chandrasekar

...Respondent/Respondent/Defendant

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.10.2019 in I.A.No.1195 of 2018 in O.S.No.205 of 2017 on the file of the learned District Munsif, Tambaram.

For Petitioner : M/s.K.R.B.Dhaaranee

For Respondent : Mr.R.Ganesh Kumar

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 14.10.2019 in I.A.No.1195 of 2018 in O.S.No.205 of 2017, on the file of the learned District Munsif, Tambaram.



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2. Brief facts which are relevant for consideration by this Court are as follows:-

2.1 The Plaintiff in the suit in O.S.No.205 of 2017 on the file of the learned District Munsif, Tambaram, is the Revision Petitioner herein. The Plaintiff had filed Petition in I.A.No.1195 of 2018 in O.S.No.205 of 2017 under Order VI Rule 17 of CPC, seeking amendment of the plaint. The Plaintiff had filed the suit in O.S.No.205 of 2017 seeking permanent injunction, in which the plaint schedule property is the property of the Plaintiff, which he had purchased in the year 1999. Therefore, the plaint schedule of property was given with boundaries as mentioned in his sale deed in the year 1999. Subsequently, the National Highways Department had acquired part of the properties of the Plaintiff as well as his neighbours for widening of the GST road. In the Award passed by the Land Acquisition Court, the properties were identified by Town Survey Numbers. After coming to know about the same, the Plaintiff sought to identify his property and his neighbours with Town Survey Numbers. Instead of Plot Numbers mentioned in the plaint schedule of property, based on sale deed of the Plaintiff, the Defendant's property was also



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acquired and he had appeared before the Land Acquisition Court regarding compensation to be paid to the land losers. Therefore, he was aware of those details. Still the Defendant had objected to the Petition seeking amendment filed by the Plaintiff. Based on the objections of the Defendant as Respondent in the Petition seeking amendment of the plaint, the learned District Munsif, Tambaram, had dismissed the Petition in I.A.No.1195 of 2018 in O.S.No.205 of 2017. Aggrieved by the same, the Plaintiff in O.S.No.205 of 2017, who is the Petitioner in I.A.No.1195 of 2018 in O.S.No.205 of 2017 had filed this Civil Revision Petition, seeking to set aside the order of the learned District Munsif, Tambaram, in dismissing the I.A.No.1195 of 2018 in O.S.No.205 of 2017 dated 14.10.2019.

3.The learned Counsel for the Revision Petitioner submitted that the Plaintiff before the Trial Court in O.S.No.205 of 2017 on the file of the learned District Munsif, Tambaram, is the Revision Petitioner. The Plaintiff claims title to the suit property through a sale deed of the year 1999. After purchase of the property, a part of it was acquired by the National Highways Department. While filing the suit, the Plaintiff had given the schedule of property as per the details in the sale deed of the year



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1999. The Plaintiff was not aware of the Town Survey Numbers.

Subsequently, the Plaintiff came to know about the Town Survey Numbers from the award passed by the Court with regard to land acquisition proceedings. Based on the same, the Plaintiff wanted to amend the plaint with regard to the mention of Plot Numbers as boundaries referred to in the plaint schedule. Instead of Plot Numbers mentioned earlier in the plaint schedule, the Plaintiff wanted to include Town Survey Numbers.

4.The learned Counsel for the Revision Petitioner invited the attention of this Court to the averments in the plaint, the averments in the written statement filed by the Defendant, the affidavit filed by the Petitioner in I.A.No.1195 of 2018 in O.S.No.205 of 2017, the counter filed by the Defendant as Respondent and also the order passed by the learned District Munsif, Tambaram, dismissing the I.A.No.1195 of 2018 in O.S.No.205 of 2017.

5.The learned Counsel for the Revision Petitioner further submitted that by allowing the amendment, the Defendant is in no way prejudiced. The Defendant as Respondent in I.A.No.1195 of 2018 had disputed that



the amendment sought for is not supported by documents. The learned Counsel for the Revision Petitioner contended that the amendment sought is a pre-trial amendment and it should have been allowed liberally as per the reported rulings of the Hon'ble Supreme Court as well as the reported rulings of this Court.

6. In support of his contentions, the learned Counsel for the Revision Petitioner had relied upon the following rulings:-

- (a) In the case of *Synam Beevi Ammal Vs. Seenii* reported in **2006 (4) CTC 239**.
- (b) In the case of *Devaraj Vs. Murugesan* reported in **MANU/TN/6777/2018**.
- (c) In the case of *Sengodan and another Vs. Sengodan and 2 others* reported in **2004 (2) L.W. 220**.

7. On perusal of the aforesaid rulings relied on by the learned Counsel for the Revision Petitioner and the submission of the learned Counsel for the Revision Petitioner is found acceptable and reasonable.



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8.At the time of filing the suit, based on the sale deed of the Plaintiff which is of the year 1999, the four side boundaries of the Plaintiff were given in the plaint for the schedule of property, with the boundaries as mentioned in the sale deed by identifying the neighbouring adjacent properties with Plot Numbers in the sale deed.

9.Before commencement of the trial, the Plaintiff came to know that in the land acquisition proceedings, the Plaintiff and its neighbours lost part of their properties. The properties of the plaintiff and the Defendant were identified by their Town Survey Numbers. Therefore, for better appreciation and identification of the property, the Plaintiff relied on the land acquisition proceedings, wherein in Town Survey Numbers had been mentioned to identify the properties. Instead of Plot Numbers as boundaries, the Plaintiff wanted to substitute Town Survey Numbers to identify the adjacent properties of the Plaintiff.

10.Mr.R.Ganesh Kumar, learned Counsel for the Respondent submitted his arguments.



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11.The objection of the learned Counsel for the Respondent is that the Petitioner in I.A.No.1195 of 2018 in O.S.No.205 of 2017 before the learned District Munsif, Tambaram, who is the Plaintiff in the suit in O.S.No.205 of 2017 had not mentioned the owner of the Plots No.6 and 7. The sole Defendant in the suit in O.S.No.205 of 2017 is the owner of Plots No.9 and 10. It is his submission that the Eastern boundary of the Plaintiff property is the GST road.

12.The learned Counsel for the Respondent relied on paragraphs no.4 and 5 of the plaint which are as follows:-

“4.The Plaintiff humbly submits that the suit property purchased by the Plaintiff is bounded on the East by 3 feet passage leading to G.S.T. Road, properties in Plot no.10, Plot no.9, Plot no.7 and Plot no.6. The Defendant herein is the owner of Plot no.10 and Plot no.9 situated on the eastern side of the Plaintiff's property.

5.The Plaintiff further submits that the National Highways Department for the expansion of the G.S.T Road acquired lands bearing Plot no.10, Plot no.9 and other adjacent Plots and paid due compensation to the defendant for Plot no.10 and Plot no.9 and the building therein was removed and G.S.T Road was expanded. After the taken over of the property for the expansion of G.S.T Road by the National Highways Department the Plaintiff's property i.e., suit property is bounded on east by G.S.T road. After the expansion



of G.S.T Road, the Highways Department left the road margin. The Defendant having developed prejudice and with an evil intention to grab the road margin on 15.11.2007 engaged men to remove the debris of the demolished super-structure with an intention to trespass and occupy the same and to make construction for commercial purpose thereby the Defendant intends to prevent the frontage right of the Plaintiff from accessing G.S.T Road at all points from the Plaintiff's suit property. The Defendant has got no right or authority to prevent the frontage right of Plaintiff from the suit property to the G.S.T Road. When the Plaintiff remonstrated for the act of Defendant, the Defendant without heeding the remonstrations of the Plaintiff continued the work of removing debris and planned to put up commercial construction. If Defendant succeeds in his attempt to making a construction it will cause irreparable injury and it will affect the frontage right of the Plaintiff from accessing G.S.T Road from his property. Since the Defendant is highly influential person in the locality the Plaintiff herein apprehends that at any time the Defendant may start making construction of commercial complex preventing the frontage right of the Plaintiff. Hence the Plaintiff herein constrained to file a suit for permanent injunction restraining the Defendant from making any manner of construction affecting the frontage right and access of the Plaintiff from suit property to the G.S.T Road at all points."

13.The learned Counsel for the Respondent/Defendant further submitted that valuable defence of the Defendant will be lost if the amendment is allowed. The amendment sought by the Plaintiff is after filing of the written statement by the Defendant.



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14.The learned Counsel for the Respondent relied on following paragraphs in his written statement:-

“5.The Defendant denies the averments state in the paragraph number 4 in the said paragraph the Plaintiff had stated eastern side 3 feet passage is put to strict proof of the same. The Defendant submits that as admitted by the Plaintiff the Defendant is the owner of the Plot no.9 measuring an extent of 436 Sq.ft., and Plot no.10, measuring an extent of 883.5 Sq.ft., a total of 1319.5 Sq.ft.,

7.The Defendant denies the averments stated in the paragraph number 5 of the plaint, and states that the only part of the Plot no.10 and Plot no.9 was acquired by the National High Ways Department, and the remaining land was retain by the Defendant, the Defendant submit that the same was established by the endorsement made by the Highways Department in the Defendant sale deed, this Defendant denies the averments that in the paragraph number 5 of the plaint regarding the “After the taken over of the property for the expansion of G.S.T Road by the National Highways Department the Plaintiff’s property i.e., suit property is bounded on the east by G.S.T Road” the Defendant submits that as the Highways Department had acquire only a part of the Defendant property the question of eastern side of the suit schedule property is bounded by road is denies and the same was put to strict proof of the same.

8.The Defendant submit that after a part acquisition of the Defendant property, he was left with the remaining extent of the land, i.e., 437 Sq., ft., in the Plot no.9 and 10, all together, this was clearly established by the documentary evidence, on the other hand the Plaintiff had not produced any evidence



regarding the extent of land acquired by the Highways Department, this clearly proves that the Plaintiff does not have any evidence to establish the case, the Defendant submits that it is the Plaintiff who try to trespass into the suit schedule property and encroached the Defendant property, only for that reasons the Plaintiff had created a highly imaginary story in order to grab the Defendant property.

9.The Defendant submits that the Defendant with the left out portion of 437 Sq.ft., in the Plot no.9 and 10, is having the E.B connection in his name and also bore well in the suit schedule property, this will establish the possession of the Defendant in the Plot no.9 and Plot no.10, but the Plaintiff with the evil intention to grab the suit Defendant property without any title to the same, had filed a false police complaint with the local police station, during the enquiry the Plaintiff is required to produce the relevant document to establish his claim, but the Plaintiff failed to establish the same and filed this suit with the false averment, with any right for this reasons this suit is liable to be dismiss with cost.”

The learned Counsel for the Respondent submitted that, by this amendment, the Plaintiff is attempting to introduce a new case. Therefore, the Petition is to be dismissed. The observation made by the learned District Munsif, Tambaram, that the Plaintiff had not furnished documents in support of his contention to identify the properties with Town Survey Numbers and therefore, dismissing the Amendment Petition based on the objection of the Respondent in the Amendment Petition cannot be



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accepted as reasonable.

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15.The objection raised by the learned Counsel for the Respondent that the order passed by the learned District Munsif, Tambaram, dismissing the Amendment Petition is a well-reasoned order, as the Plaintiff failed to furnish documents in support of his contention identifying the properties by Town Survey Numbers. Therefore, the learned District Munsif, Tambaram, had rightly dismissed the Petition, which does not warrant any interference by this Court and is found acceptable. It is the further submission of the learned Counsel for the Respondent before this Court that the Plaintiff had filed additional typed set where he relied on the land acquisition proceedings to identify Town Survey Numbers which document he did not file before the Trial Court and therefore, this Court cannot consider the additional typed set to set aside the well-reasoned order of the learned District Munsif, Tambaram.

16.During argument, the learned Counsel for the Revision Petitioner by way of rejoinder to the reply made by the learned Counsel for the Respondent stated that at the time of the Civil Revision Petition, the



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learned Single Judge of this Court had directed the learned Counsel for the Revision Petitioner to furnish documents in support of his contention to identify the properties with Town Survey Numbers instead of Plot Numbers. Therefore, only on the direction of this Court, he had filed additional typed set; a copy of the land acquisition proceedings had been furnished to identify the properties of the Plaintiff and the Defendant with Town Survey Numbers. The further objection of the learned Counsel for the Respondent that even after Town Survey Numbers are introduced again, it creates confusion that Town Survey Numbers are also being sub-divided further, for which the learned Counsel for the Revision Petitioner had stated that after land acquisition proceedings, the remaining land in occupation is in possession of the respective owner of the properties. On request of the respective owner of the properties it was sub-divided by the Revenue Department. Therefore, no prejudice will be caused to the Respondent in this Civil Revision Petition, who is also the Respondent before the Trial Court/learned District Munsif, Tambaram.

Point for consideration:

Whether the order passed by the learned District Munsif, Tambaram, dismissing the I.A.No.1195 of 2018 in O.S.No.205 of 2017, Petition seeking amendment of the plaint by the Plaintiff in the suit dated 14.10.2019 is to be set aside?



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17. On consideration of the rival submission, on perusal of the plaint in O.S.No.205 of 2017, written statement filed by the Defendant in O.S.No.205 of 2017, the affidavit of the Plaintiff as Petitioner in I.A.No.1195 of 2018 in O.S.No.205 of 2017, the counter filed by the Defendant as Respondent in I.A.No.1195 of 2018 in O.S.No.205 of 2017, the order passed by the learned District Munsif, Tambaram, dismissing the I.A.No.1195 of 2018 in O.S.No.205 of 2017 dated 14.10.2019.

18. The objection of the learned Counsel for the Respondent that the rulings relied on by the learned Counsel for the Revision Petitioner, namely,

(a) In the case of ***Synam Beevi Ammal Vs. Seeni.***

(b) In the case of ***Devaraj Vs. Murugesan.***

(c) In the case of ***Sengodan and another Vs. Sengodan and 2 others.***

will not be helpful in this case, because the Plaintiff in those cases had furnished documents before the Trial Court in support of their contention seeking amendment. In this case, the Revision Petitioner as Plaintiff, had not furnished documents before the Trial Court. Therefore, the above said rulings will not be helpful to the Petitioner's case.



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19.The objection of the learned Counsel for the Respondent that the Petitioner cannot be permitted to furnish documents before this Court and seeking to set aside the order of the learned District Munsif, Tambaram, in dismissing the I.A.No.1195 of 2018 in O.S.No205 of 2017 even though it is found reasonable, it cannot be accepted. At the time of admission, of the Civil Revision Petition, the then learned Single Judge of this Court had directed the learned Counsel for the Revision Petitioner to furnish documents before this Court to identify the property with Town Survey Numbers. As per the learned Single Judge direction, the learned Counsel for the Revision Petitioner had furnished documents from land acquisition proceedings in support of his contention. The submission of the learned Counsel for the Revision Petitioner that the Defendant is also a party to the said land acquisition proceedings and is also aware of the same. Still, he objected to the amendment as though the Plaintiff was introducing a new case, which was found reasonable. The objection of the learned Counsel for the Respondent to the amendment is unfair, considering the fact that he is also a party to the land acquisition proceedings as he lost part of his property in the land acquisition proceedings, whereby he has to seek



possession of the land acquired by the National Highways Department.

Therefore, he is aware of these Town Survey Numbers. Still, he had objected as though the Plaintiff was introducing a new case, which cannot be appreciated. It is only for the sake of objectivity and nothing else.

20.The submission of the learned Counsel for the Revision Petitioner that, at the time of filing the suit, based on his sale deed, he had identified the boundaries with Plot Numbers is found acceptable. Before proceeding with the trial, he wanted to amend the plaint as he came to know about the Town Survey Numbers in the land acquisition proceedings. Therefore, instead of Plot Numbers, he wanted to amend the plaint schedule by identifying the boundaries with Town Survey Numbers in place of Plot Numbers which was also found acceptable. The objection of the learned Counsel for the Respondent that the order passed by the learned District Munsif, Tambaram, dismissing the Petition is a well-reasoned order as the Plaintiff had not furnished document before the Trial Court. The Revision Petitioner had furnished document which was not entertained and cannot at all be accepted. In the light of the direction issued by the learned Single Judge of this Court to the Revision Petitioner



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to furnish documents in support of the contention of the Revision Petitioner that he came to know about the same from the land acquisition proceedings. Therefore, in obedience to the direction of this Court, he had furnished the said documents. Therefore, the objection of the learned Counsel for the Respondent that the Revision Petitioner as Plaintiff before the Trial Court, had not furnished documents in support of his contention to the Trial Court, whereas he furnished documents in this Revision Petition, cannot be sustained. The objection of the learned Counsel for the Respondent is rejected. The learned Counsel for the Respondent objected to the rulings cited by the learned Counsel for the Revision Petitioner in the cases of *Synam Beevi Ammal Vs. Seeni, Devaraj Vs. Murugesan* and *Sengodan and another Vs. Sengodan and 2 others*, where the Plaintiff in those cases had furnished relevant documents in support of the contention of the Plaintiff before the Trial Court. Whereas, in the case, the revision Petitioner had furnished documents only in the Revision, and not before the Trial Court. Therefore, the said rulings will not be applicable and are also rejected.



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21. In view of the above rulings, it is clearly stated that after the 2002 Amendment to the CPC, amendments are to be liberally allowed before the commencement of the trial. Here, the trial is yet to commence. Therefore, the learned District Munsif, Tambaram, ought to have allowed the Petition. In the light of the reported rulings, the learned Trial Judge ought to have allowed amendment in the light of the 2002 Amendment to the CPC. Since it is a pre-trial amendment. If the Defendant had objected after amending the plaint, the Defendant had a chance to file an additional written statement. In this case, the Defendant is also aware of the Town Survey Numbers, but only for the purpose of raising objection. Based on that objection, the learned District Munsif, Tambaram, finds the pre-trial amendment is unacceptable and unreasonable. In the light of the rulings cited by the learned Counsel for the Revision Petitioner, the amendment sought for by the Revision Petitioner as the Plaintiff, in the suit in O.S.No.205 of 2017 is found acceptable. Since it is a pre-trial amendment no prejudice will be caused to the Respondent.



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22.If at all the Respondent feels his valuable rights are affected, he can file additional written statement to meet the amendment. In this case, the objection of the learned Counsel for the Respondent as Defendant, before the Trial Court as though the Plaintiff is introducing a new case cannot at all be accepted. The objection that the valuable defence is available for amendment is also rejected. There is no such prejudice caused to the Defendant by allowing the amendment. The Plaintiff as Petitioner in I.A.No.1195 of 2018 that, by inadvertence, there was a typographical error regarding eastern boundaries. Even those errors ought to be rectified before trial.

23.In short, the learned Counsel for the Revision Petitioner has rightly submitted that it is a pre-trial amendment and ought to have been allowed liberally instead of being dismissed by the learned Trial Judge, which is contrary to the reported rulings. Therefore, it warrants interference by this Court exercise its power under Article 227 of the Constitution of India.



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24.In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondent.

25.In the result, **the Civil Revision Petition is allowed**, the order passed by the learned District Munsif, Tambaram, dismissing the Petition in I.A.No.1195 of 2018 in O.S.No.205 of 2017 dated 14.10.2019 is set aside. No costs.

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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

To

The District Munsif, Tambaram.

**Order made in
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30.06.2023