



CRP.No.1197 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.01.2023

Delivered on: 22.02.2023

C O R A M

THE HONOURABLE Mrs. JUSTICE **J.NISHA BANU**

Civil Revision Petition No.1197 of 2019
and CMP.No.7678 of 2019

P.Ambigaidoss

..Revision Petitioner/plaintiff

Vs

S.Sekar

..Respondent/defendant

PRAYER: CRP filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 15.11.2018 passed in I.A.No.587 of 2018 in O.S.NO.139 of 2015 on the file of Principal District Court, Cuddalore.

For petitioner : Mr.S.Seralathan

For respondent : No appearance



CRP.No.1197 of 2019

ORDER

WEB COPY

This civil revision petition is filed seeking to set aside the order dated 15.11.2018 passed in I.A.No.587 of 2018 in O.S.No.139 of 2015, whereby, the revision petitioner/plaintiff's prayer for amendment of plaint under Order 6 Rule 17 of CPC was rejected by the trial court.

2. The revision petitioner as plaintiff filed suit in O.S.No.139 of 2015 against the respondent/defendant. The relief sought for is for declaration of title and for permanent injunction.

3. According to the revision petitioner/plaintiff, he purchased two acres of land and took possession of the suit property. The respondent/defendant has purchased one acre out of total extent of 4 acres in which the petitioner has also purchased the suit property measuring an extent of two acres. The specific case of the petitioner is that the respondent taking advantage of the wrong boundary, denied the title of the petitioner and interfering with his possession.



CRP.No.1197 of 2019

4. The defendant resisted the claim of the plaintiff and submitted that the boundary in the plaint schedule is not correct and the plaintiff is bound by the decree and judgment made in O.S.No.189 of 2008.

5. In the suit filed by the revision petitioner/plaintiff in O.S.No.139 of 2015, trial completed and both sides evidence over. At that time, the petitioner/plaintiff moved an application to withdraw the suit with liberty to file a fresh suit on the same cause of action since the boundaries are wrong and petitioner is bound by decree in O.S.No.189 of 2008.

6. The said application seeking liberty to file fresh suit was dismissed by the trial court on 14.11.2017.

7. Against the said order rejecting the liberty to file fresh suit, CRP.No.4650 of 2017 has been filed before this court and this court observed that it is open to the petitioner to file appropriate application to amend the description of the property. Therefore, the petitioner/plaintiff filed petition to amend the plaint.



CRP.No.1197 of 2019

WEB COPY 8. Heard both sides and perused the records.

9. Even though this civil revision petition was heard on 05.07.2022, and reserved for orders, learned counsel for the petitioner has not produced the copy of judgment passed in O.S.No.189 of 2008 for perusal of this court. Therefore, the matter is again listed on 06.01.2023. The learned counsel for the revision petitioner/plaintiff has produced the copy of the judgment in O.S.No.189 of 2008 and the same is taken on file.

10. On a perusal of the aforesaid judgment passed in O.S.No.189 of 2008, it is clear that one Uthirapathi is the plaintiff in the said suit. He filed the suit against the revision petitioner herein and 6 others. The trial court decreed the suit in favour of the plaintiff-Uthirapathi, wherein, the defendants were set exparte.

11. In the present case, the I.A., filed for amendment of the description of the property in the plaint, has been rejected. The learned Judge pointed out that the respondent/defendant has put forward a decree in O.S.No.189 of 2008 in which a preliminary decree for $\frac{1}{4}$ share was



CRP.No.1197 of 2019

passed in favour of Uthirapathy a brother of the petitioner/plaintiff. The respondent/defendant is the purchaser of the suit schedule property after the decree. Since the respondent has taken a plea that boundaries are not correct, the petitioner/plaintiff suppressed the fact that there is a mistake in the boundaries of the sale deed is in his favour. The respondent/defendant filed adangal and judgment copy to show that he is enjoying one acre in suit survey number. Further, the learned Judge, given findings that the petitioner/plaintiff has not cared to amend the 4 boundaries. Even during the cross examination of P.W.1, the boundaries relating to the entire extent of 4 acres was deposed. But the application for amendment of plaint has been filed at the verge of arguments and the petitioner/plaintiff was not vigilant in prosecuting the case and has not adduced any reason for not taking out amendment application at the earliest stage.

12. The learned Judge, clearly pointed out that in the suit, parties have adduced evidence and the case is posted for arguments and as such dismissed the I.A. for amendment of the plaint.



CRP.No.1197 of 2019

WEB COPY

13. I do not find any infirmity in the order passed by the learned Judge. Accordingly, this civil revision petition is dismissed as devoid of merits. The learned Judge shall hear both sides arguments and dispose of the suit in O.S.No.139 of 2015 on merits within a period of six months from the date of receipt of a copy of this order. No costs. Interim stay is vacated.

22.02.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
nvsri

To

1.The learned Principal District Judge, Cuddalore.

2.The Record Keeper, V.R.Section, High Court, Madras.



WEB COPY



CRP.No.1197 of 2019

J.NISHA BANU, J.

nvsri

CRP.No.1197 of 2019

22.02.2023