

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 27.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA
PRASAD****C.R.P.(NPD).Nos.1846 & 1848 of 2020
and C.M.P.No.11068 of 2020**

C. Kuppusamy

... Petitioner
in both CRPs

Vs.

Kulandaiammal

... Respondent
in both CRPs

Common Prayers:- Civil Revision Petitions are filed under Section 227 of the Constitution of India to set aside the fair order and decree dated 06.12.2019 made in I.A.Nos.44 & 43 of 2016 in A.S.No.25 of 2014 on the file of Subordinate Court, Rasipuram respectively.

For Petitioner : Mr. B. Jawahar
in both CRPsFor Respondent : No appearance
in both CRPs



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COMMON ORDER

The present civil revision petitions have been filed to set aside the fair order and decree dated 06.12.2019 made in I.A.Nos.44 & 43 of 2016 in A.S.No.25 of 2014 on the file of the Subordinate Court, Rasipuram respectively.

2. The revision petitioner is the appellant in A.S.No.25 of 2014. Originally he filed suit O.S.No.201 of 2011 for permanent injunction against the respondent/defendant and the same was dismissed by the District Munsif Court, Rasipuram on 27.04.2011. Against the judgment and decree passed in O.S.No.201 of 2011, the revision petitioner has preferred an appeal in A.S.No.25 of 2014 on 21.05.2014 on the file of Sub Court, Rasipuram. During the pendency of the appeal, the revision petitioner/appellant has filed I.A.Nos.43 & 44 of 2016 to amend the schedule of property in the appeal. In the plaint in O.S.No.201 of 2011 there were two properties mentioned in the schedule of the property, hence in the appeal suit, the petitioner has filed two I.A.Nos.43 & 44 of 2016 to amend the schedule property in the appeal suit. The amendment which was sought for in the amendment applications is extracted as



Details of Amendment

- 1. In the Appeal suit in Column of Description property item No.1 & 2 after Unanthangal and to add “uratchi, Chinna chekkadi”***
- 2. After the Appeal suit property and to add “Now the above survey Nos are sub divided as S.No.16/2A2, and S.No.16/2C2 and one well with THADCO EB Connection S.C.No.375 with 7-1/2 HP Electric Motor Pump set-1 and its security deposit. The above well is situated in survey No.16/2A2, Patta No:32.***

3. The amendment applications were filed under Order 6 Rule XVII of Civil Procedure Code and the same were dismissed by fair and decreetal order passed by the Sub Court, Rasipuram on 06.12.2019 on the ground that the revision petitioner/appellant is introducing a new case by way of amendment in the schedule of the property in the appeal suit which cannot be entertained under law that too in the appeal stage. It is pertinent to extract Order 6 Rule 17 of CPC for better appreciation:-

“Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as many be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to



the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record. Though Court notice as well as private notice has been served to the respondent, the same has been returned with an endorsement ”refused”.

5. The reason stated by the revision petitioner/appellant in the applications are that in the suit schedule property while filing the suit in O.S.No.201 of 2011 the revision petitioner/appellant has inadvertently mentioned Unanthangal Gramam instead of uratchi, Chinna chekkadi Gramam and also the Sub Division of the relevant survey numbers. This apart he has also failed to mention the electricity connection and the above facts were not mentioned in the plaint due to typographical error and the suit was dismissed by the trial Court mainly on the ground that the plaintiff has not mentioned the correct schedule of the property. More over only after perusing the judgment passed by the trial Court these facts came to the knowledge of the revision petitioner who is the plaintiff in the suit. The amendment which was sought for by the revision



petitioner/plaintiff will not in any way change the nature of the suit and the same has to be allowed by the appellate Court.

6. It can be seen that the applications for amendment in the schedule of the property were filed belatedly after a delay of three years on 10.11.2016 and the suit was decreed on 17.03.2013 and no reason were adduced for the delay caused in filing the applications for amendment by the revision petitioner. The appellate Court while dismissing the applications for amendment relied on the judgment of the Hon'ble Supreme Court of India reported in 2008 (5) SCC 117 in the case of *Chander Kanta Bansal Vs Rajinder Singh Anand* and the relevant paragraph is extracted as below:-

“The entire object of the said amendment is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other's case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts



out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases”.

7. Hence the appellate Court has come to the conclusion that the revision petitioner/applicant **has not proved that in spite of due diligence he could not raise a plea at the appropriate time before the trial Court and hence there is a delay of three years in filing the application for amendment.** The other reason given by the appellate Court for dismissing the applications are that revision petitioner/plaintiff has not furnished correct particulars of the schedule of the property and also has not approached the Court with clean hands and this apart the amendment will create a new case and the rights of the respondent will also be affected and dismissed the applications. This Court is inclined to accept the grounds/reasons given by the Appellate Court for dismissing the applications for amendment.

8. The appellate Court has rightly dismissed the amendment applications taking into consideration of all the aspects as stated supra and there is no valid ground or reason for this Court to interfere with the



order passed in the applications by the appellate Court.

9. Hence, the fair order and decree in I.A.Nos.43 & 44 of 2016 in A.S.No.25 of 2014 dated 16.12.2019 passed by the Sub Court, Rasipuram is hereby confirmed by this Court.

10. In the result, these civil revision petitions stand dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Index : No
Internet : Yes
dpq

27.11.2023

To
The Subordinate Court,
Rasipuram



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8

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J. SATHYA NARAYANA PRASAD, J.

dpq

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