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C.R.P.No.1870 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1870 of 2019
and C.M.P.No.12303 of 2019

L.Devaraj .. Petitioner
Vs.

1. Selvam
2. Muniappan
3. Harikrishnan .. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 15.03.2019 made in I.A.No.692 of 2018 in O.S.No.360 of 2013 on the file of the learned Additional District Munsif (Full Additional Charge), Villupuram by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manokaran

For R1 to R3 : Mr.E.Sathiyaraj

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 15.03.2019 made in I.A.No.692 of 2018 in O.S.No.360 of 2013 on the file of the learned Additional District Munsif (Full Additional Charge), Villupuram, thereby dismissing the petition



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seeking amendment of plaint to include the prayer of recovery of possession in respect of the suit property.

2. The petitioner is the plaintiff and the respondents are the defendants. Originally, the petitioner filed a suit for declaration and permanent injunction in respect of the suit schedule property. The case of the petitioner is that the suit property and other properties originally belong to one Lakshmana Gounder, who is none other than the father of the petitioner herein. He had two other sons by name Murugayyan and Deivasigamani. The respondents are the sons of the said Murugayyan. After the death of the father of the petitioner, his properties were orally divided between the petitioner and his other brothers. Accordingly, the first item of the property was allotted in favour of the petitioner. After sub division, he also obtained separate patta. The adangal was also issued in his favour and he is continuously paying kist for the properties. Out of the share allotted in favour of the petitioner, ad-measuring 2 acres, one acre was sold out in favour of one Sowbagyammal by a registered sale deed dated 03.05.1978. While being so, the respondents herein disturbed



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the peaceful possession and enjoyment of the subject property. Hence, the suit.

3. Resisting the same, the respondents filed their written statement stating that after the partition between the father of the petitioner as well as the father of the respondents, the suit property was exchanged by way of an exchange deed for the reason, the properties which were allotted in favour of the petitioner's father has no water irrigation. Therefore, the property which was allotted in favour of the father of the respondents herein was exchanged in front of the Panchayatars and an exchange deed dated 21.12.1987 was also executed. Accordingly, the property which was originally allotted in favour of the petitioner's father was exchanged in favour of the respondents' father. After the demise of their father Murugayyan on 03.03.2008, the respondents had partitioned the property and they are in possession and enjoyment of their respective shares. In fact, they also mortgaged the said property and borrowed loan from third party. After the settlement of the entire loan they had redeemed their respective properties. In fact, the petitioner herein also mortgaged the property which was exchanged by his father with Indian Bank and



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obtained loan. They were also issued patta and annexed all the documents from the year 1952 in their written statement. The suit was filed on 30.10.2013 and thereafter, the respondents filed their written statement on 10.04.2014.

4. Even then, the petitioner did not come forward with any petition to amend the plaint, seeking the prayer of recovery of possession. Only after examination of P.W.1, the petitioner had come forward with a petition seeking amendment of plaint to include the alternative prayer of recovery of possession in respect of the suit property.

5. A perusal of affidavit filed in support of the amendment petition, the petitioner stated that the respondents have been contesting the suit admitting his title to the suit properties, but contending that they have been in possession of the same on exchange of their property to him. However, he has been in physical possession and enjoyment of the suit properties and patta was issued in his name and he is paying kist to the Government. Therefore, according to the petitioner, he is in



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possession and enjoyment of the suit property. Even then, he is seeking amendment of plaint to include alternative prayer of recovery of possession.

6. It is also seen that by the exchange deed dated 21.12.1987, the suit property was allotted in favour of the respondents' father. Thereafter, they had partitioned the property by partition deed dated 13.06.2005 and they are in possession and enjoyment of their respective shares. In fact, they were also issued patta and thereafter, they mortgaged the property by registered mortgage and availed loan for their respective shares. Thereafter, they redeemed the same after repayment of the entire loan amount. In fact, the petitioner also mortgaged the property which was already exchanged in favour of his father with the Indian Bank by the registered mortgage deed. Therefore, if at all the petitioner denied the contention made in written statement, the petitioner ought to have filed a petition seeking amendment to include the prayer of recovery of possession immediately after the written statement was filed. However, the petitioner did not file any application to include alternative prayer of recovery of possession. That apart, the petitioner claims the suit property



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through the oral partition between the petitioner's father and his brother i.e, the father of the respondents herein. Thereafter, by the exchange deed, dated 21.12.1987, the property was exchanged between the father of the petitioner and the father of the respondents herein. Therefore, the petitioner cannot maintain the prayer of recovery of possession in respect of the suit property.

7. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India in **2022 SCC OnLine SC 1128** in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another*** in which it was held that all amendments ought to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

8. In the case on hand, as stated supra, the respondents had



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resisted the suit by filing their written statement itself, they categorically stated by the exchange deed dated 21.12.1987, the property which was allotted by oral partition in favour of the petitioner's father has been exchanged between them and the respondents are in possession of the suit property and they have also issued patta. Therefore, the amendment sought for by the petitioner would cause injustice and prejudice them. Therefore, the judgment cited by the learned counsel for the petitioner is not helpful to the case on hand.

9. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below and this revision is liable to be dismissed.

10. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

03.02.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

The Additional District Munsif (Full Additional Charge), Villupuram.

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and C.M.P.No.12303 of 2019

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