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CRP. PD. Nos.1812, 1814 and 1816 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11. 2023

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.PD.Nos.1812, 1814 and 1816 of 2023

and

C.M.P. No.11682 of 2023

K. Velmurugan

.. Petitioner

Versus

1.R. Palanivel

2.P. Vasanthi

3.P. Sakthivel

.. Respondents

Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.02.2023 passed in I.A.Nos. 6 of 2021, 7 of 2022 and I.A. No. 2 of 2020 in O.S. No. 103 of 2014, on the file of the Principal District Munsif, Tiruchencode.

For Petitioner : Mr.Elizabeth Ravi

For Respondents : Mr.T.L.Thirumalaisamy

COMMON ORDER

Challenging the order in I.A. No. 6 of 2021, I.A. No. 7 of 2022 and I.A. No. 2 of 2020 in O.S. No. 103 of 2014, on the file of the Principal District Munsif, Tiruchencode, the petitioner has preferred this revision petition.



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WEB COPY 2. Heard both sides.

3. The revision petitioner is the plaintiff, who has instituted the suit in O.S. No. 103 of 2014 for the relief of permanent injunction. Even in the plaint, the revision petitioner has placed reliance on the settlement deed dated 24.11.2011 in his favour, based on which, he claimed title over the plaint described property. On notice, the defendants have filed a written statement repudiating the genuineness of the settlement deed dated 24.11.2011 relied on by the plaintiff. Therefore, the revision petitioner-plaintiff has filed the present application under Order VI Rule 17 of CPC to amend the plaint to alter the prayer in the plaint into one of Declaration to declare that he is the owner of the plaint described property and for other allied relief.

4. The applications have been opposed by the defendants/ respondents herein by contending that the suit was filed in the year 2014 and when the suit is posted for argument, these applications are filed to patch up the lacuna. It was also contended that the amendment, if allowed, would alter the nature of *lis* and in such event, the respondents will be highly prejudiced. In any event, there is no reason assigned by the revision petitioner-plaintiff for filing these



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applications at the fag end of the trial proceedings and therefore, the respondents prayed for dismissal of the applications.

5. The trial Court, on considering the rival submissions, concluded that the applications for amendment was filed at the fag end of trial when the suit was posted for argument. It was also held that the suit was filed in the year 2014 and in the year 2020, the prayer sought for in the suit is sought to be modified into one of declaration. There is no explanation offered by the petitioner-plaintiff for seeking such relief at the fag end of the trial proceedings and accordingly dismissed all the applications.

6. The learned counsel for the petitioner submitted that her mother had executed settlement deed dated 24.11.2011 in his favour and based on the same, he became the owner of the suit property. When his possession was disturbed by the defendants, the plaintiff filed the suit for bare injunction. In the written statement, the defendants have specifically denied the title of the petitioner based on the settlement deed dated 24.11.2011 and therefore, it has become necessary for him to seek for modification of the prayer in the suit. Therefore, in the interest of justice, the Court below ought to have allowed the applications instead of dismissing the same. The learned counsel therefore



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prayed for allowing these Civil Revision Petitions.

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7. On the other hand, the learned counsel for the respondents only submitted that the application seeking amendment was filed at the fag end of trial, especially when the case was posted for argument. Even otherwise, the written statement was filed in the suit on 10.09.2012. Immediately, the revision petitioner did not seek for amendment of the plaint. Therefore, on the ground of delay, the court below is wholly justified in dismissing the application seeking amendment and for other reliefs. The learned counsel therefore prayed for dismissal of these revision petitions.

8. On perusal of records it is seen that even in the written statement filed on 10.09.2012, the defendants have denied the plaintiff's title based on the settlement deed dated 24.11.2011. Therefore, the plaintiff ought to have filed these applications at an earlier date. However, the fact remains that as on date the settlement deed stand in his name. The Plaintiff asserts a right over the plaint described property on the basis of the settlement deed dated 24.11.2011. In such circumstance, the plaintiff ought to have claimed the relief of declaration over the property. Though the plaintiff filed these applications for amendment belatedly, this Court feels that the relief of declaration sought for



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by the plaintiff is on the basis of the settlement deed dated 24.11.2011 which has been referred to in the plaint is just and necessary. In such circumstance, denying the right to alter the plaint would cause immense prejudice and hardship to the plaintiff, besides, it will lead to multiplicity of proceedings. Therefore, this Court is of the view that an opportunity must be given to the plaintiff to amend the prayer in the plaint and also to pay appropriate court fee thereof. In such event, it is always open to the defendants to file their additional written statement, including the ground relating to delay in seeking such relief of declaration. Thereafter, the learned trial Judge shall proceed with the case and dispose of the same within a period of two months from the date of receipt of a copy of this order

9. With the above direction, these Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2023

Index: Yes / No
Internet : Yes / No
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To
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The Principal District Munsif,
Tiruchencode.

T.V.THAMILSELVI, J.,

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