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C.R.P.No.2145 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.2145 of 2020
and C.M.P.No.13575 of 2020

1.P.Subramaniam
2.S.Thirumurugan

...Petitioners

-Vs-

1.Jayammal
2.Ayyavu @ Natesan
3.District Collector,
Namakkal,
Namakkal District.
4.Revenue Divisional Officer,
Revenue Divisional Office,
Tiruchengode.
5.Tahsildar,
Tahsildar Office,
Tiruchengode.

...Respondents

Prayer:- Civil Revision Petition filed under Section 115 of CPC., to set aside the fair and decretal order dated 31.10.2019 made in I.A.No.1 of 2019 in O.S.No.248 of 2015 on the file of the Additional District Munsif Court, Tiruchengode.



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For Petitioners : Mr.T.L.Thirumalaisamy
For R1 : Mr.R.Prabakar
For R2 : Left
For R3 to R5 : Mr.V.Jeevagiridharan
Additional Government Pleader

ORDER

The Plaintiffs in the suit in O.S.No.248 of 2015 on the file of the learned Additional District Munsif, Tiruchengode, are the Revision Petitioners herein.

2.The learned Counsel for the Revision Petitioners contended that the Plaintiffs filed the suit in O.S.No.248 of 2015 before the learned Additional District Munsif, Tiruchengode that is now pending on the file of the learned Additional District Munsif, Tiruchengode seeking relief of a declaration of way over the 2nd item and for subdividing the 2nd item of the property bearing S.No.70 in Kottapalayam Village, Tiruchengode Taluk, Namakkal District. The learned Counsel for the Revision Petitioners further contended that before the institution of the suit, they had requested the Revenue Officials to subdivide the suit property but they had not responded. Therefore, the same is clearly mentioned in paragraph 5 of the



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plaint. On 07.01.2015, the Plaintiffs sent a notice to the Defendants through their Counsel and they received the same. However, Defendants 3 to 5 did not come forward to subdivide the suit property, and they had issued notice under Section 80 of the CPC prior to the institution of the suit. Since Defendants 3 to 5 did not respond to institute the suit, only during the cross examination of P.W.1, he was confronted with the document regarding the sub division of S.No.70 as S.No.70/1 and 70/2 and he came to know about the sub division of the common path in S.No.70. The cross examination of P.W.1 was on 17.12.2018. On 08.01.2019, within a month he had filed Petition under Order VI Rule 17 of CPC seeking to amend the schedule of property as the 2nd item in the plaint in O.S.No.248 of 2015. The Petition was numbered as I.A.No.1 of 2019 in O.S.No.248 of 2015. The Respondents vehemently objected to the same as it was belated and also the trial had commenced.

3.After enquiry, the learned Additional District Munsif, Tiruchengode had dismissed the Petition in I.A.No.1 of 2019 in O.S.No.248 of 2015 by order dated 31.10.2019. Aggrieved by the same, this Petition had been filed by the Plaintiffs in O.S.No.248 of 2015,



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seeking to set aside the order of the learned Additional District Munsif,
Tiruchengode.

4.The learned Counsel for the Respondents vehemently objects to the submission of the learned Counsel for the Revision Petitioners stating that the written statement was filed by the 5th Defendant, adopted by Defendants 3 and 4, on 08.06.2016. The Plaintiffs had knowledge of those facts when the written statement was filed by the Revenue Officials who were Defendants 3 to 5. In the written statement, defendants 3 to 5 clearly stated that the path way in the 2nd item mentioned by the Plaintiffs was already subdivided as S.Nos.70/1 and 70/2 in the year 1994, and S.No.70/1 is used as a road and S.No.70/2 is Natham vacant site. The 1st Defendant is the 1st Respondent herein who had filed a separate written statement on 16.08.2016 in which he stated that the 2nd item of the property has already been subdivided and S.No.70/2, a Natham vacant site, has been used by him for grazing his cattle. If the 1st plaintiff had been indulgent and smarter, he ought to have immediately, after filing the written statement in 2016, proceeded with the filing of the amendment petition, which he has not done so far. The affidavit filed by the 1st Plaintiff in I.A.No.1 of 2019



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in O.S.No.248 of 2015 states that he was taken by surprise only in the cross examination, cannot be accepted as the truth was raised by the 1st Defendant in the counter. The Petitioner was not indulgent, and therefore, after trial had commenced, particularly when the cross examination of P.W.1 had been completed, there could be no amendment after the 2002 amendment to the Code of Civil Procedure. Therefore, the order of dismissal of I.A.No.1 of 2019 in O.S.No.248 of 2015 on the file of the learned District Munsif, Tiruchengode, does not warrant any interference.

5.Further, it is the contention of the learned Counsel for the Respondents that the trial in the suit had been completed and posted “For Arguments”. Therefore, Civil Revision Petition has to be dismissed.

6.It is also the contention of the learned Counsel for the Respondents that the order passed by the learned Additional District Munsif, Tiruchengode, dated 31.10.2019, but the Civil Revision Petition filed in December, 2020. The only intention of the Revision Petitioners/ Plaintiffs is to protract the proceedings, thereby preventing the Trial Court from disposing of the suit. Also, he would submit that the Plaintiff wanted



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to seek declaration over the S.No.70/2 which is in the enjoyment of the 1st Defendant. Therefore, he filed this suit with the knowledge which it had already been filed. Therefore, the suit itself is not maintainable since it was filed only to protract the proceedings.

7.Heard the learned Government Pleader representing the official Respondents and he adopted the submission of the 1st Respondent.

8.On consideration of the rival submissions and on perusal of the copy of the plaint, copy of the written statement, copy of the affidavit filed by the Petitioner herein and the counter filed by the Respondents as well as the order passed by the learned Additional District Munsif, Tiruchengode, in I.A.No.1 of 2019 in O.S.No.248 of 2015 dated 31.10.2019.

9.The submission of the learned Counsel for the Revision Petitioners submitted that the Plaintiff before the Trial Court, that no prejudice will be caused by allowing this Petition not at all be accepted. It was found that he was not indulgent and was smarter, he ought to have filed this Petition immediately in the year 2017 and not waited till the cross examination.



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Therefore, the order of the learned Additional District Munsif, Tiruchengode, dismissing the Petition is found to be in accordance with the amendment to proceed, wherein it is stated that there shall not be any amendment of the plaint after the commencement of the trial. This is not a fit case to exercise the discretion of the High Court in 2002 amendment with regard to the order of the Trial Judge.

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

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Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

To

- 1.The Additional District Munsif Court,
Tiruchengode.
- 2.District Collector,
Namakkal,
Namakkal District.
- 3.Revenue Divisional Officer,
Revenue Divisional Office,
Tiruchengode.
- 4.Tahsildar,
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