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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

Civil Revision Petition.No.2865 of 2022
and C.M.P.No.15529 of 2022

1.V.Matheswaran

2.Chitra ... Petitioners

Vs.

M.C.Ragul ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and final order dated 15.12.2021 in I.A.No.5 of 2020 in O.S.No.184 of 2014 on the file of the I Additional Sub Court, Erode.

For Petitioners : Mr.S.Kaithamalai Kumaran

For respondent : Mr.Shase
for Mr.M.Guruprasad

ORDER

The petitioner has invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the orders passed in I.A.No.5 of 2020 in O.S.No.184 of 2014, dated 15.12.2021 by the learned I Additional Sub Judge, Erode.

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The facts in brief as can be gathered from the records are as follows:

2. The respondent/plaint has filed O.S.No.184 of 2014, seeking declaration of title in respect of schedule mentioned property shown as EFCG in rough sketch enclosed to the suit and for delivery of the vacant possession of the same by removing of super structures by way of mandatory injunction.

3. According to the respondent/plaintiff, the suit schedule properties were purchased from its original owner by name Vasanthi under registered sale deed on 27.11.1997 and since then, the he has been in possession and enjoyment of the property and that taking advantage of absence of plaintiff, the petitioners/defendants have encroached EFCG portion of the suit property and raised constructions.

4. The petitioners/defendants filed written statement denying the allegations levelled against them and submitted that they purchased the property adjacent to the suit schedule property on 12.03.1998 and that they have not encroached the property belonging to respondent/plaintiff and the constructions in the schedule of properties were in existence long time to the notice of the respondent/plaintiff.

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5. During the course of trial P.W.1 and P.W.2 and D.W.1 were examined at that stage, the respondent/plaintiff filed I.A.No.208 of 2014 for appointment of Advocate Commissioner for noting down the physical features of the schedule of property and the said application came to be allowed. Accordingly, the Advocate Commissioner has visited the suit schedule property on 27.11.2018 and filed a report showing the exact measurements of alleged encroachment made by the petitioners/defendants.

6. The respondent/plaintiff has filed I.A.No.5 of 2020 seeking to amend the plaint basing on the report of the Advocate Commissioner, the petitioners/defendants have opposed it, however, the said petition was allowed on 15.12.2021. Aggrieved by the same, the present Civil Revision Petition is filed.

7. The learned counsel for the revision petitioners have challenged the orders passed by the Trial Court on two grounds. Firstly, that the petitioners for amendment of plaint was filed belatedly. Secondly, amendments to the plaint is proposed to improve and fill the lacunae in plaintiff's case.

8. Heard both sides and perused the record.

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9. Order VI Rule 17 of C.P.C. runs as under:-

> "[17. 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 may 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."

At any stage of the proceedings of pleadings can be amended, provided the purpose of amendment shall be to determine the real question in controversy between the parties and that it shall be demonstrated that in spite of due diligence, the parties could not have raised the matter earlier in respect of which amendment was sought for.

10. The respondent/plaintiff has filed suit for declaration of title and recovery of schedule of property shown as rough sketch as EFCG to the extent of 420 square feet. The petitioners/defendants filed a written statement opposing the reliefs sought for by the respondent/plaintiff that on the ground

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that the petitioners/defendants have not encroached any property belonging to respondent/plaintiff. Therefore, the burden lies on the plaintiff to prove not only the fact that the respondent/plaintiff are the owners of schedule property which is sought to be declared but also that part of his property is in the possession of the petitioners/ defendants. The respondent/plaintiff is expected to prove the extent of encroachment with exact measurements. If the decree is passed as per rough sketch and basing on the schedule of property, the decree may not be properly executed unless exact measurements of the encroachment is mentioned.

11. The respondent/plaintiff could not mention the exact measurements in the plaint schedule as the petitioners/defendants are in possession and thereby cannot go and measure the extent. In the absence of any material before the Court, as to what is the extent of encroachment allegedly made by the petitioners/defendants, an Advocate Commissioner was appointed who has reported about the extent of encroachment. Once the extent of schedule of property is clearly known to the Court basing on the Advocate Commissioner's report then the Court must be liberal in permitting the plaint to be amended as per the Advocate Commissioner's report, so that even if the suit is decreed an appropriate executable decree can be passed. Considering

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the same, the amendments of plaint basing on Commissioner report insofar as extent of the schedule of property can be considered.

12. The other ground raised by the learned counsel for the petitioner/defendant is that the petition for amendment of plaint was filed on at belated stage after pleadings are completed after framing of issues and after examination of P.W1, P.W.2 and D.W.1, petition is filed for amendment of plaint. Normally, the application for amendment of plaint has to be filed prior to the commencement of trial. But, it is not a thumb rule that amendment of plaint cannot be permitted after commencement of trial. After Advocate Commissioner has submitted his report with exact measurements of encroachment, the petition amendment of plaint was filed without any delay. The cause of action of the respondents/plaintiffs to file the amendment petition is filing of advocate commissioner's report, hence, there is no delay in filing the petition for amendment. Further, in order to resolve the dispute between the parties completely and in order to avoid multiplicity of the litigation amendment is necessary.

13. In view of the discussions made above, the Trial Court has not committed error in allowing the application I.A.No.5 of 2020 filed for

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amendment of plaint and therefore, the Civil Revision Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

25.04.2023

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To

The I Additional Sub Court,
Erode.

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Dr. D. NAGARJUN, J.

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C.R.P.No.2865 of 2022

25.04.2023