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C.R.P.No.4053 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4053 of 2023

Sathish

... Petitioner

-Vs-

1. Shanthi
2. Jennifer
3. Sugumaran
4. Rajakumaran

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 18.07.2023 passed by the learned I Addl. District Munsif at Puducherry in I.A.No.559 of 2023 in O.S.No. 2470 of 2018 .

For Petitioner

: Mr.E.Chandrasekaran



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ORDER

Challenging the impugned order passed in I.A.No.559 of 2022 in O.S.No.2470 of 2018 passed by the learned I Addl. District Munsif at Puducherry, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner filed a suit in O.S.No. 2470 of 2018 against the defendants 1 to 4 for the relief of mandatory injunction. The defendants appeared and filed their written statement denying the plaintiff's right over the property. At that time, his counsel has not properly advised him, so he is not able to claim proper prayer and now the counsel was changed and as per his advise, he filed an application under Order 6 Rule 17 seeking to amend the plaint by including the prayer of declaration, which reads as follows :-

“1. In paragraph VI of the plaint, in prayer (i) to incorporate the following prayers in the prayer column of the plaint before the existing prayer (i) as prayer :-

i. Declaring that the plaintiff is the absolute



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owner of the suit scheduled property.

ii. Declaring that the settlement deed dated 21.05.1998 in favour of the 2nd to 4th defendants is null and void.

2. In paragraph VI of the plaint, to renumber the existing prayer (i) as prayer (iii)

3. In paragraph VI of the plaint, to renumber the existing prayer (ii) as prayer (iv)

4. In paragraph VI of the plaint, to renumber the existing prayer (iii) as prayer (v)”

That application was strongly objected by the defendants. On considering both side submissions, the trial judge dismissed the application holding that plaintiff has not enclosed any court fee for the new prayer. Aggrieved over the said findings, the plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that due to lack of communication from his counsel, he is not able to claim proper prayer in the suit and as per the advise of new counsel, he filed the said application to include the prayer of declaration, since because the defendants denied the plaintiff's claim. Therefore, he filed the said



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application to amend the plaint by including the prayer for declaration and if necessary arose, he will pay the court fee, but without allowing the application, the trial judge erroneously concludes that the court fee was not paid for the new prayer. Hence, he prayed to set aside the findings of trial judge.

5. Records perused. On perusal of records, it reveals that the suit is ripe for trial and at this stage, according to the plaintiff, as per the advise of new counsel, he filed the said application praying to amend the prayer for declaration. Admittedly, the Revision Petitioner/plaintiff filed a suit for mandatory injunction claiming that he is the absolute owner of the suit schedule property and when his title is denied, the necessity arose for him to amend the plaint seeking for the relief of declaration. If the relief sought by the plaintiff is not permitted, his valuable right to protect his property will be defeated. Hence, he prayed to amend the plaint, but the same was not properly appreciated by the trial judge and erroneously concludes that the court fee was not paid for the new prayer. The observation made by the trial judge is premature one and hence, the observation made by the trial judge is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.559 of 2022



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in O.S.No.2470 of 2018 is set aside and the said application is ordered to be allowed. Liberty is granted to the respondents/defendants to file their additional written statement, if any before the trial court No costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.11.2023

Index : Yes/No
Speaking Order : Yes/No
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To

The I Addl. District Munsif, Puducherry.

T.V.THAMILSELVI, J.



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