



CRP (MD) No.77 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	26.07.2023
Pronounced on	17.11.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (MD) No.77 of 2023
and
CMP (MD).No.351 of 2023

N.Latha

... Petitioners/Plaintiff

Vs

1.K.Kaliyamurthy
2.K.Dhanabal

... Respondents/defendants 1 &2

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decreetal order passed in I.A.No.70 of 2022 in O.S.No.72 of 2019 dated 23.08.2022 on the file of the learned District Munsif Court, Thiruvaiyaru.

For Petitioner : Mr.M.R.Sreenivasan

For Respondents : Mr.N.Shanmuga selvam



CRP (MD) No.77 of 2023

ORDER

This revision petition has preferred as against the order dated 23.08.2022 passed in I.A.No.70 of 2022 in O.S.No.72 of 2019 on the file of the learned District Munsif Court, Thiruvaiyaru.

2.The revision petitioner/ plaintiff has filed the above suit in O.S.No.72 of 2019 on the file of the learned District Munsif Court, Thiruvaiyaru for the declaration of right of pathway over the plaint schedule property in order to reach his property in Survey No.535/109 of Thiruvaiyur Town, Thanjavur District and for mandatory injunction for removing the obstruction in the suit property including the sunshade, steps water tub, Asbestos roofing with the iron pillars extended in the suit property.

3.Further submission of the revision petitioner is that in the Southern part of the said property, the Respondents are having their residential house and the Northern part of it, is their back yard portion. The Respondents sold an extent of 2292 Sq feet of vacant site in the back yard portion to the



CRP (MD) No.77 of 2023

revision petitioner through a registered sale deed dated 09.11.2011 for a sale consideration of Rs.4,17,000/-. The original sale deed was filed before the trial Court. As stated above the revision petitioner, has purchased the Southern portion of the suit property in S.No. 535/109. The remaining portions of the property in S. No.535/109 is in the enjoyment of the Respondents. The Respondents are having their residential house in the said Northern portion and the 1st Respondent is residing in that house.

4.The revision petitioner was given a right of way in the property of the Respondents on the Eastern side to the extent of 3 feet East-West from the Venkalanayakkan Street till the site purchased by the revision petitioner for the purpose of gaining access to the property purchased by the revision petitioner from the Respondents. This common way is the suit property herein. The said right of way is clearly mentioned in the sale deed dated 09.11.2011 executed by the Respondents in the favour of Revision Petitioner and the right of way is valued at Rs 3,742/- in the said sale deed. Thus, the revision petitioner has acquired a right of way by grant over the suit property more fully described in the schedule of property of the plaint. In the vacant site purchased by the revision petitioner, she has constructed a residential



house and it is in the finishing stage. The revision petitioner has proposed to shift her residence to the said house immediately after completion of construction. The revision petitioner has annexed a rough plan showing the suit common way.

5.While so, the Respondents taking advantage of the revision petitioner absence, has constructed steps in the suit property and the revision petitioner has extended a sunshade over the suit lane in the month of April 2019. The revision petitioner issued a legal notice on 27.04.2019 to the 1st Respondent calling upon him to remove the said sunshade and the steps newly constructed over the common way. The 1st Respondent who received the said notice sent a false reply on 28.05.2019 denying the right of way in suit property.

6.The Respondents have put up cement tub in the suit property and have also extended the Asbestos sheet roofing over the suit lane. As submitted above the revision petitioner have got a right of way over the suit property and the Respondents have granted the said right of way in the sale



deed executed by them. In fact, there is no other way for her to reach the property which she had purchased from the Respondents. The right of way is an easement appurtenant to her property and the revision petitioner has been enjoying this easement right of way over the suit property, ever since the revision petitioner purchased the property from the Respondents. The Respondents have no right to interfere with this right of way and they are bound to maintain the common way as it is and they cannot create any obstruction in the common way.

7.The Respondents have denied the right over the suit schedule property. Hence, the revision petitioner filed the above suit for declaration of right of way over the suit schedule property and consequential relief of mandatory injunction to remove the obstruction and also for a decree for prohibitory injunction to restrain the Respondents from making any obstruction in the suit common way.

8.The Respondents have been arrayed as Defendants 1 and 2 in the above suit. The 1st Respondent/1st Defendant has filed his written statement on 06.08.2019, which was adopted by the Defendants 2 to 4. The Defendants



CRP (MD) No.77 of 2023

categorically admitted in their written statement Para No. 4 that they have sold a portion of the suit schedule property to the revision petitioner which is from Venkalanayakkan Street to her property measuring at 3 feet East-West width. The Respondents has categorically admitted the right of pathway, and also admitted that they have put up sun shade and steps over the above said suit schedule property and also stated that they have not made any obstruction over the suit schedule property (pathway) and prayed for the dismissal of the suit.

9. In the above suit, the Revision Petitioner herself was examined as P.W.I on 03.09.2021 and at the request of the Respondents' counsel it was adjourned for cross examination of PW 1. But, the Respondents herein without cross examining the revision petitioner, they have adopted a dilatory tactics to drag the suit filed I.A No 70 of 2022 for amendment of the written statement to correct the candid admission made by the Respondents/Defendants in Para No. 4 that they have not admitted that they have sold the suit schedule property to the plaintiff. Per contra to the admission, now the respondent wanted to amend the admission made by them in their written statement Para No. 4 after a lapse of 3 years from the date of



CRP (MD) No.77 of 2023

filing of written statement.

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10. The revision petitioner has filed detailed counter affidavit objecting and resisting the amendment petition filed by the Respondents/Defendants on the ground that it is a clear admission and it is in fact that the defendants have sold the suit schedule property to the revision petitioner on 09.11.2011 under document No.1606/2011. The amendment petition is filed after lapse of 3 years from the date of filing of written statement i.e., from 06.08.2019. Further, the revision petitioner resisted the above application on the ground that the amendment petition is filed post trial, since the trial commenced on 03.09.2021 and the petition was filed on 25.02.2022. Thus, in viewing from any angle the amendment petition is unsustainable and liable to be dismissed.

11. However, the learned District Munsif in an erroneous approach of law and facts mechanically allowed the above amendment petition by his order dated 23.08.2022 which caused irreparable loss and hardship to the revision petitioner. Hence, the revision petitioner has preferred the above Civil Revision petition on the grounds stated therein.



12.The revision petitioner prays for setting aside the order passed by the trial Court in I.A.No.70 of 2022 for the above reason.

13.The learned Counsel appearing for the revision petitioner would submit that as far as amendment is concerned the attempt to wholly resile from the admission made after lapse of many years cannot be permitted. He would submit that however, the proposition of law that even an admission can be withdrawn as held in ***Panchdeo Narai Srivastava*** case does not reflect the correct legal position and it is overruled. However, the admission can be clarified or explained by way of amendment. Further, he would submit that if such amendments are permitted, it would cause prejudice to the plaintiff. To support of his contention has relied upon the following decision cases:

1.(2015) 10 SCC 203

2.AIR 2005 AP 484

14.On the other hand, the learned counsel for the respondents would submit that the Court had ample power to allow amendment of plaint but said power should be exercised in the interest of justice and for determination of real question of controversy between parties. Liberal approach should be the general rule, particularly in cases where other side can be compensated with



cost. He would further submit that such amendment ought to be allowed in pleadings to avoid multiplicity of litigations.

15. Heard both sides and records perused.

16. The revision petitioner as plaintiff filed the above suit in O.S.No.72 of 2019 for declaration of right in pathway in the suit property and for mandatory injunction to remove the obstructions made by the defendants in the said pathway. In the above suit, the respondents as defendants have filed the written statement in which it is categorically admitted that they have sold a portion of the property to the revision petitioner/plaintiff and also admitted the existence of the pathway right given to the revision petitioner/plaintiff from Venkalanayakkan street to the property of the revision petitioner. The respondents/defendants have also admitted that they have put up sunshade and steps over the above said suit pathway and that they have not built any construction over the suit property. While so, the respondents/defendants have filed an application to amend the admission made by them in their written statement after lapse of three years from date of filing written statement. As held in the reported case cited on the side of the revision



CRP (MD) No.77 of 2023

petitioner, admission in pleadings cannot be ordered to be withdrawn by way of amendment. However, the same can be explained and clarified, by way of application. In the present case, the application for amendment withdrawing the admission made in the written statement is not to explain or clarify the admissions made by them in the written statement. It cannot be construed as typographical error and therefore if the same is allowed to be withdrawn, it would cause a great hardship to the petitioners. If such amendment is permitted and there is every possibility for the respondent to take diametrically opposite plea, amounting to denial of the admission made by them in the written statement. Therefore, the respondents cannot be permitted to amend the written statement and so the order of the trial Court needs interference.

17. Accordingly, the order passed by the trial Court is set aside and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2023

vsn

To

10/12



CRP (MD) No.77 of 2023

The District Munsif Court, Thiruvaiyaru.

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