



C.R.P(MD)No.54 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.54 of 2019

and

C.M.P(MD)No.271 of 2019

Bhovas
Through his Power Agent,
Jebasingh

...Petitioner/Petitioner/
Plaintiff

Vs.

Johndurai

...Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.06.2018 passed in I.A.No.354 of 2017 in O.S.No.117 of 2012 on the file of the District Munsif Court cum Judicial Magistrate, Orathanadu.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.M.Punitha Deva Kumar

ORDER

This civil revision petition has been filed against the order passed by the District Munsif Court cum Judicial Magistrate, Orathanadu in I.A.No.354 of 2017 in O.S.No.117 of 2012 dated 27.06.2018.



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2. The petitioner/plaintiff has filed a suit for declaration and recovery of possession in respect of two schedule properties. Wherein, the petitioner wanted to amend the B Schedule property on the ground that, by inadvertent typographical mistake instead of "southwest" in the B schedule property, it has been wrongly mentioned as "northeast". While filing the application, the petitioner has urged the ground that even in the commission application, the lie of the B schedule property shown as southwest. Therefore, they have filed an amendment application to amend the B schedule property.

3. The said application was resisted by the respondent on the ground that since the petitioner has already moved an application to scrap the commissioner's report and that the amendment sought for is only subsequent to the written statement, therefore, contended that the amendment application has been filed only to fill up the lacuna.

4. After considering either side submission, the learned Trial Judge found that the commissioner's report has been scrapped from the record. Therefore, the very cause of action shown by the petitioner become infructuous. Eventually, the learned Judge has ultimately dismissed the amendment application.



5. I have given my anxious consideration to either side submission.

6. It is the specific submission of the learned counsel for the petitioner that the very amendment sought for is a pre-trial amendment, and that though in the amendment application, they referred to the knowledge about the inadvertent mistake, such factum was admitted by the respondent/defendant in the written statement in Paragraph No.6. Even according to the respondent/defendant, the B schedule property is situated only in the south west of A schedule property. Therefore, the learned counsel submit that, notwithstanding the scrapping of the Commissioner's report, the very ground for seeking an amendment still subsist.

7. The very submission of the learned counsel for the petitioner sounds positively. It is pertinent to mention here that, since because there is an amendment from north east to south west, still the boundaries are the same. Therefore, there cannot be change in the B schedule property. In such circumstances, this Court is of the view that the very order passed by the learned Trial Judge is liable to be interfered with. Hence, this Court is inclined to interfere with the order of the learned Trial Judge



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by allowing this civil revision petition.

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8. In the result, this Civil Revision Petition stands **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The District Munsif Court
cum Judicial Magistrate,
Orathanadu

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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