



C.R.P.(MD) No.1592 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.1592 of 2023

and

C.M.P(MD) No.7812 of 2023

1.Nagasamy

2.R.K.Rajan

... Petitioners

Vs.

Meenakshi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and executable order dated 27.02.20203 passed in the application in I.A.No.1 of 2023 in O.S.No.163 of 2018 on the file of the District Munsif Court, Ramanathapuram.

For Petitioners : Mr.J.Barathan

ORDER

This Civil Revision Petition is filed to set aside the impugned order dated 27.02.20203 passed by the District Munsif Court, Ramanathapuram in I.A.No.1 of 2023 in O.S.No.163 of 2018.



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2. The petitioners are the plaintiffs in the suit in O.S.No.163 of 2018 on the file of the District Munsif Court, Ramanathapuram. The said suit in O.S.No.163 of 2018 was filed for declaration of title and for permanent injunction, in which, a specific boundary for the property in S.No.189/2A2 measuring an extent of 17 Cents was mentioned.

3. During the pendency of the suit, the petitioners/plaintiffs filed an application in I.A.No.1 of 2023 to amend the survey number from 189/2A2 to 190/2A1 and also the extent of property from 17 Cents to 16 Cents in the plaint. The Trial Court, after consideration, dismissed the said I.A. impugned order dated 27.02.2023, against which, the present Civil Revision Petition is preferred.

4. The learned counsel appearing for the petitioners/plaintiffs would submit that the Trial Court has dismissed the said I.A. without proper appreciation of position of law. The petitioners/plaintiffs claimed that the suit schedule properties were purchased by the father of the petitioners/plaintiffs Karuppiyah Servai along with his brothers, Velu Servai and Nagu Servai who is the father of the respondent through a registered Sale Deed dated 02.06.1949



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and the said Sale Deed dated 02.06.1949 has been produced along with the
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plaint as Document No.1.

5. The respondents/plaintiffs have specifically claimed that the suit property measures 1 Acre 57 ½ Cents and that some of the co-shares of the vendors had not joined in execution of the Sale Deed dated 02.06.1949 and those co-sharers claimed rights for 35 Cents and hence the father of the petitioners/plaintiffs and one of his brothers namely, Velu Servail jointly purchased the 35 Cents through a registered Sale Deed dated 14.09.1953. It is submitted that since the father of the respondent Nagu Servai had no wherewithal to give money, he did not join in purchasing the 35 Cents. It is further submitted that while partitioning the suit property among the three brothers, 58 Cents each was allotted to the share of Karupiah Servai and Velu Servai whereas, 41 Cents was allotted to the share of the Nagur Servai.

6. It is also submitted that in fact, the respondent/defendant had also admitted in his Written Statement about the purchase of 1 Acre 57 ½ Cents through a registered Sale Deed dated 02.06.1949 as well as about the purchase made under the registered Sale Deed dated 14.09.1953 and that the Trial Court has failed to note the above facts and erroneously dismissed the I.A.



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7. It is submitted that the petitioners/defendants had mistakenly mentioned the survey number of the suit property as 189/2A2 measuring 17 Cents instead of mentioning the correct survey number as 190/2A1 measuring 16 Cents and the Trial Court, without considering the mistake committed by the counsel at the time of drafting the plaint, has erroneously dismissed the I.A. filed by the petitioners/plaintiffs for amending the survey number and the extent of the suit schedule property. Aggrieved by the same, the present Civil Revision Petition is preferred.

8. Heard the learned counsel for the petitioners/plaintiffs and perused the documents.

9. The petitioners have moved an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amending the survey number and extent of the suit schedule property. Order 6 Rule 17 of the Code of Civil Procedure, 1908 reads 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:



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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.

10. The learned counsel appearing for the petitioners/plaintiffs himself admitted that the suit has been posted for arguments and at that stage, the proposed amendment petition was allowed.

11. There is no doubt that the amendment can be made at any stage of the proceedings. But, amendment must be made to those facts which are already pleaded in the plaint. If such amendment changes the nature and characteristic of the suit or cause of action, then it must be disallowed. The amendment cannot be claimed by a party as a matter of right. However, the discretion to be exercised by the Court is guided by principles mentioned in the proviso to Rule 17 of Order 6 of the Code of Civil Procedure, 1908 and depends upon the facts and circumstance of the case.

12. The object of the proviso is to give limited discretion to the Court and that may be subjected to the satisfaction of the Court to certain



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amendments to the proceedings. However, ultimate focus will be on the party claiming such amendments to prove essential, bona fide and to prove despite due diligence it was inevitable to seek the amendment earlier.

13. In this case, after the completion of trial and at the time of arguments, the petitioners sought for amendment of survey number and extent of the suit schedule property which would change the nature and characteristic of the suit. The petitioners have also not submitted that in spite of due diligence, they could not raise matter before the commencement of trial. In such circumstances, the amendment sought for by the petitioners cannot be permitted. The Trial Court has rightly dismissed the I.A. vide impugned order dated 27.02.2023 which is in accordance with law and does not call for any interference.

14. Accordingly, this Civil Revision Petition is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

06.07.2023

NCC :Yes/No
Internet: Yes/No
Index: Yes/ No
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The District Munsif Court,
Ramanathapuram.



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K.GOVINDARAJAN THILAKAVADI, J.

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