



C.R.P.P.D.(MD)No.678 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P.P.D.(MD)No.678 of 2018 &
C.M.P.(MD)No.3017 of 2018

Vilasini (died)

1.Suseela

2.Mohankumari

3.Ushakumari

4.Ajithkumari

5.Sheelakumari

6.Sudhakaran

7.Nalina Kumari

8.Vikraman

9.Kalathoran

10.K.Pratheepkumar

... Petitioners

vs.

1.Krishna Leela

2.Hari Kumar

3.Devaki

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order in I.A.No.987 of 2013 in O.S.No.241 of 2009, dated 13.03.2017 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Petitioners

:

Mr.C.Godwin

For Respondents

:

Mr.A.David Oliver for R1 & R2
No appearance for R3



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ORDER

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The plaintiffs filed an application seeking to amend the plaint, after commencement of the Trial by filing I.A.No.987 of 2013. In the said amendment application, the plaintiffs have stated that during trial of the suit, they came to realise that the Survey Number of the B-Schedule Property has been mentioned as 73/7 instead of 73/4. According to the plaintiffs, it is only a typographical error. Neither the boundaries nor the description of the property in other respects undergoes a change.

2. This application was resisted by the defendants on the ground that the amendment cannot be allowed post trial of the suit and according to the defendants, by way of amendment, the plaintiffs are trying to incorporate a new pathway which was contrary to the pleadings and rough sketch filed along with the plaint.

3. Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the respondents 1 and 2 and perused the records.



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4. The learned counsel appearing for the revision petitioners would submit that the Trial Court ought not have entertained the amendment application since the application was filed after commencement of the trial and since the specific mandate of Order VI Rule 17 of CPC underwent an amendment in the year 2019, the said application ought to have been rejected. He would place reliance on the decision of this Court in *S.Rajendran vs. K.Kanniah and 6 others reported in 2010 (1) CTC 837*, wherein, this Court held that the amendment petition filed after commencement of the trial cannot be entertained in view of the Court Power limited by proviso of Amendment to CPC by Act 22/2002. He would place reliance on the decision of the Honourable Supreme Court in *J.Samuel and others vs. Gattu Mahesh and others reported in 2012 (2) CTC 94* where the Honourable Supreme Court rejected the contention of the parties seeking amendment stating that the omission was a typographical mistake. However, the facts of the case before the Honourable Supreme Court were entirely different. In the said case, the Honourable Supreme Court found that the amendment was in the nature of introducing few sentences and therefore, the same cannot be styled as a



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typographical error. Therefore, the ratio laid down by the Honourable Supreme Court will not apply to the facts of the present case.

5. Coming to the present case, the only amendment which the plaintiffs seek is to correct the Survey Number in respect of the Schedule B Property. They do not propose to change the boundaries or the extent of the Schedule B property, except for substituting S.No.73/7 with 73/4. It is seen that plaintiffs have come forward with the present application in I.A.No.987 of 2013 only after realising the said mistake, during the examination of PW1 in witness box.

6. The embargo under Order VI Rule 17 does not take away the power of the Court to permit the parties to make such corrections in the nature of typographical mistakes as in the instant case. By substituting the Survey Number, the plaintiffs have not in any way altered the nature or character of the suit. The description of the Schedule also remains the same in all other aspects. Therefore, I do not find any infirmity in the order of the Trial Court allowing the amendment application.



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7. Considering that the suit is of the year 2009, I direct the Trial Court to endeavour to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

8. In the result, the Civil Revision Petition is dismissed. No costs. The order of the Principal District Munsif Court, Padmanabhapuram in I.A.No.987 of 2013 in O.S.No.241 of 2009 is confirmed. Consequently, the connected Miscellaneous Petition is closed.

30.11.2023

NCC : Yes / No
Index : Yes / No
Speaking / Non-speaking order

mbi

To

The Principal District Munsif,
Padmanabhapuram



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P.B.BALAJI, J.

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