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C.R.P(MD)No.1633 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.07.2023**

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THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.1633 of 2018

and

C.M.P(MD)No.7175 of 2018

1.Rakkappan

2.Petchiyammal

...Petitioners/Respondents/
Defendants

Vs.

V.P.Ramesh

...Respondent/Petitioner/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 06.4.2018 in I.A.No.498 of 2016 in O.S.No.272 of 2015 on the file of the Additional District Munsif Court, Madurai Town.

For Petitioners : Mr.A.N.Ramanathan

For Respondent : Mr.K.Marimuthu

ORDER

The present civil revision petition has been filed against the order passed by the Additional District Munsif Court, Madurai Town in I.A.No.

498 of 2016 in O.S.No.272 of 2015, dated 06.4.2018.



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2. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.

3. The facts which give rise to the filing of the instant civil revision petition is that, the plaintiff has filed a suit for permanent injunction. According to the plaint averments, the plaintiff and defendants are neighbours. It appears that the defendants have filed a written statement raising defense that the plaintiff has encroached an extent of 455 square feet measuring 91 X 5 feet. Immediately after filing of the written statement, the plaintiff has come up with an application to amend the plaint. Wherein, he has stated that the defendants have come with the case that they have encroached 455 square feet. Hence, in order to demarcate both the properties and to find out the real issue involved in the suit, it is incumbent upon them to amend the plaint, so as to include the defendants' properties as the second schedule suit property in the suit.

4. The said application was objected on the ground that it is an after thought. However, the learned Trial Judge allowed the application on the ground that the very amendment is necessary to decide the ultimate



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issue involved in the suit, as well as the very amendment has been filed prior to the commencement of the trial.

5. Aggrieved with the order, the defendants have come up with the application.

6. The learned counsel for the defendants submits that if the amendment is allowed, then the same would alter the nature of the suit, which contention was objected by the learned counsel for the plaintiff.

7. At this juncture, while looking at the affidavit filed by the plaintiff/petitioner, their only submission is that, since the defendants have mentioned in the written statement that there was an encroachment of 455 square feet, unless the defendants' property is also made as a second schedule property, the real issue could not be adjudicated more effectively. This Court is in full agreement with the argument of the learned counsel for the plaintiff and this Court also finds that such amendment was sought for prior to the commencement of the trial, and further more, the mere incorporation of schedule of property will in no way alter the nature of the property. Therefore, this Court is of the firm view that the findings of the learned Trial Judge is well considered and



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this Court do not want to interfere with the said order.

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8. The learned counsel for the petitioners herein would submit that he must be given an opportunity to file an additional written statement after the amendment is carried out in the plaint. It is his right to file an additional written statement after the amendment is carried out.

9. In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

27.07.2023

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

- 1.The Additional District Munsif Court,
Madurai Town.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.KUMARAPPAN,J.



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