



C.R.P.(MD).No.2569 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.02.2023

DELIVERED ON: 20 .02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.2569 of 2022

and

CMP(MD).No.12618 of 2022

1.Vijaya @ Vijayalakshmi

2.Maha @ Mahalakshmi

3.S.Natarajan

....Petitioners

Vs

1.Poosari

2.Dhanalakshmi

3.Renganathan

4.Vignesh

...Respondents

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 13.10.2022 passed in I.A.No.2 of 2022 in O.S.No.152 of 2011 by the learned Additional District Munsif, Lalgudi.



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For Petitioners : Mr.M.Dinesh Hari Sudarsan

For Respondents : Mr.J.Madhu

ORDER

The present revision petition has been filed by the defendants in a suit for declaration and consequential permanent injunction.

2.In the plaint, the plaintiffs had prayed for a declaration that the Power of Attorney dated 27.02.2002 said to have been executed in Malaysia and registered before the District Registrar, Tiruchirappalli on 13.05.2002 and all such subsequent transactions based upon the said Power of Attorney are non-est in the eye of law and they are not binding upon the plaintiffs. The plaintiffs had further prayed for a consequential relief of permanent injunction restraining the defendants from effecting any mutation of the revenue records. The plaintiffs had further prayed for permanent injunction not to interfere in the peaceful possession of the property of the plaintiffs.

3.A perusal of the schedule of property indicates that the extent of plaint schedule property is 46 cents. During the cross examination, the



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plaintiffs came to understand that the actual extent of the property is completely different from the extent of the property mentioned in the plaint. Therefore, the plaintiffs had filed I.A.No.2 of 2022 to amend the plaint in order to reduce the extent from 46 cents to 33 cents.

4.The said I.A., was resisted by the defendants on the ground that the plaintiffs are attempting to project a contradictory case from that of the pleadings in the plaint. The plaintiffs do not have any title to the property in question and he has suffered a dismissal of an earlier amendment application filed for the relief of cancellation of the document of the defendants.

5.The defendants had further contended that the error is not an arithmetic mistake and the same cannot be amended by way of an amendment application. The defendants had further contended that already a trial has begun and the question of allowing the amendment application at this stage would not issue.

6.The trial Court after consideration of the submissions made on either side, had chosen to allow the application. Challenging the same, the present revision petition has been filed by the defendants.



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7.The learned counsel for the petitioners had contended that this is a post trial amendment and the Court should not have been liberal in allowing the said application. That apart, great prejudice would be caused to the defendants, in case, if the amendment is allowed. The plaintiffs are not consistent and every time, they are attempting to change the cause of action. The plaintiffs cannot rely upon the answer extracted during the cross examination in order to amend the plaint.

8.The learned counsel for the petitioners had further contended that the plaintiffs have not satisfied the proviso to Order 6 Rule 17 C.P.C. They attempted to impress upon the Court that there is no pleadings with regard to the fact that inspite of due diligence, the plaintiffs would not have raised the issue before commencement of trial. Hence, he prayed for allowing the revision petition.

9.Per contra, the learned counsel appearing for the respondents had contended that there was an arithmetic error in calculating the extent of land. Ultimately, when it was found out during the cross examination, the plaintiffs came forward to reduce the extent of land in the schedule



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mentioned property. When the plaintiffs prayed for decreeing the suit for a lesser extent, the same cannot be found fault with. Hence, he prayed for sustaining the order passed by the trial Court.

10.I have considered the submissions made on either side and perused the materials available on record.

11.A perusal of the schedule of property annexed to the plaint indicates that the plaintiffs sought the suit prayer for an extent of 46 cents. Now by way of amending the plaint schedule property, the petitioners seek to reduce the said extent to 33 cents. Apart from the said amendment, no other amendment has been sought for. The plaintiffs had only reduced the extent from 46 to 33 cents and the defendants cannot be considered to be prejudiced by seeking a prayer for a lesser extent. If the Court ultimately arrives at a finding that the plaintiffs are entitled to the prayer, the Court is empowered to grant a lesser prayer as contemplated under Order 7 Rule 7 of C.P.C. The amendment sought for would neither change the cause of action nor it amount to withdrawing any admission on the part of the plaintiffs.



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12.The Hon'ble Supreme Court in a judgement reported in **(2005) 13 SCC 89 (Sajjan Kumar Vs. Ram Kishan)** has held in Para No.5 as follows:

“5.Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit”.

13.In view of the above said judgement of the Hon'ble Supreme Court, even though there was lack of due diligence, amendment of



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description of property can be allowed to decide the real dispute. In the present case, the description of property is sought to be amended only to reduce the extent of property from 46 cents to 33 cents which is not likely to cause any prejudice to the defendants.

14. In view of the above said facts, I do not find any illegality or infirmity in the order passed by the trial Court. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

1. The Additional District Munsif
Lalgudi
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
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