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C.R.P.(PD).No.1012 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1012 of 2024

and

C.M.P.No.5234 of 2024

Elavarasan

... Petitioner

VS

1.Vasantha

2.Murugan

3.Vijayalakshmi

4.Karpagavalli

5.Gokul

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 07.12.2023 made in I.A.No.11 of 2023 in O.S.No.62 of 2015 passed by the Additional District and Sessions Judge, Dharmapuri, Dharmapuri District and allow this Civil Revision Petition.



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For Petitioner : Mr.M.R.Jothimanian

For R1 : M/s.V.R.Annagandhi

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application filed by the 1st respondent/plaintiff seeking amendment of the plaint.

2. The 1st respondent herein filed a suit seeking declaration of title and delivery of possession. In the original plaint, the suit property was described as a vacant site. The petitioner herein filed a written statement mentioning the existence of superstructure in the suit property. The written statement was filed by petitioner on 20.04.2018. However, the 1st respondent has not taken any steps to amend the description of the suit property immediately.

3. As per the impugned order, the suit is in the stage of plaintiff's side evidence. After five years, the 1st respondent has filed the instant application seeking amendment of the description of the suit property so as to include the



superstructure in the plaint schedule.

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4. In the affidavit filed in support of the amendment application, it was stated by the 1st respondent that the existence of the superstructure was mentioned by the 1st respondent in her plaint. But however, it was omitted to be mentioned in the description of the property.

5. The amendment application was seriously opposed by the petitioner herein on the ground that inspite of mentioning of the superstructure found in the suit property in the written statement filed by the petitioner, the 1st respondent failed to take any steps for amendment of the plaint immediately.

6. The Trial Court allowed the amendment application by imposing cost of Rs.5,000/- payable by the 1st respondent to the petitioner and other defendants and aggrieved by the same, the petitioner is before this Court.

7. The learned counsel appearing for the petitioner vehemently



contended that inspite of the fact the petitioner filed written statement in the year 2018 mentioning the existence of superstructure in the suit property, the 1st respondent has not taken any steps to amend the plaint immediately and hence, the amendment application at belated stage shall be dismissed.

8. It is seen from the typed-set of papers, the 1st respondent referred about existence of superstructure in the body of the plaint. However, the same has not been mentioned in the schedule to the plaint. Now, the 1st respondent wants to rectify the said mistake by incorporating the description of the superstructure in the plaint schedule. The suit is for declaration of title and recovery of possession. If the suit property is not properly described in the schedule to the plaint, certainly it will cause confusion at the time of execution. Hence, in order to decide the controversy between the parties in a comprehensive manner, the amendment sought for by the 1st respondent is absolutely necessary. Further, the 1st respondent in the body of the plaint mentioned about the existence of superstructure and hence, the amendment sought for is only clarificatory in nature.

9. It is settled law that the amendment which is necessary to decide the



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actual controversy between the parties and which are clarificatory in nature shall be liberally allowed. Therefore, I do not find any error in the order passed by the Trial Court allowing the amendment application. However, taking into consideration inspite of mentioning of the superstructure in the written statement filed by the petitioner in the year 2018, the 1st respondent/plaintiff failed to take steps immediately, this Court feels cost imposed by the Trial Court shall be enhanced to Rs.15,000/-.

10. Therefore, the Civil Revision Petition is dismissed subject to the condition that 1st respondent shall pay the additional cost of Rs.10,000/- to the petitioner by depositing the same to the credit of O.S.No.62 of 2015 on the file of the Additional District and Sessions Judge, Dharmapuri within a period of two weeks from the date of receipt of copy of this order.

11. If the 1st respondent failed to deposit the enhanced cost within the time stipulated, the benefit of the impugned order passed in I.A.No.11 of 2023 allowing amendment application will not enure to her. In case, the 1st respondent deposits the additional cost within the time stipulated, the order



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allowing amendment application stands confirmed. It is need less to say that it is open to the petitioner to file additional written statement and the same shall be filed within a period of four weeks from the date of filing of amended plaint with advance copy served to the petitioner. The petitioner is permitted to withdraw the cost to be deposited by petitioner before Trial Court, by moving formal petition. No costs. Consequently, the connected civil miscellaneous petition is closed.

19.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

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The Additional District and Sessions Judge,
Dharmapuri, Dharmapuri District.



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S.SOUNTHAR, J.

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