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C.R.P.(PD).No.1204 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1204 of 2020
and CMP.No.6505 of 2020

1.R.Sivaji (died)

2.Geetha

3.Manohari

4.A.Balaji

(P2 to P4 brought on record as Lrs of the deceased sole petitioner's viz., Sivaji
vide Court Order dated 12.02.2021 made in CMP.No.208 of 2021 in
CRP.No.1204 of 2020)

... Petitioners

vs.

1.Elanchezhian

2.Kaliyammal

3.Rukmani

4.Kichan @ Krishnamoorthi

5.Bama

6.Sakthivel

7.Sugandhi

8.Sumithra

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the judgment and decree dated 27.02.2020 in I.A.No.1 of 2020 in A.S.No.47 of 2019 on the file of the Special Subordinate Court-II, Jayakondam.



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For Petitioners : Mr.S.Kamadevan
For Respondents : M/s.R.Thiyagaran
for R2, R4 and R6
R7-Insufficient address
R1, R3, R5 and R8 – No appearance

ORDER

The Civil Revision Petition is filed challenging the order passed by the First Appellate Court, dismissing the petition filed by the petitioner/appellant to amend the plaint prayer for declaration and also to amend the description of the property by including survey numbers.

2. The petitioner herein filed a suit seeking recovery of possession and also for mandatory injunction to remove the encroachment made by the defendants in the suit. The suit was dismissed by the trial Court. Aggrieved by the same, the petitioner has filed an First Appeal. Pending First Appeal, the amendment application has been filed by the petitioner seeking to include the prayer for declaration of title. The petitioner also sought for amendment of valuation column and schedule of the plaint by including the survey numbers of the suit property.



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3. In the affidavit filed in support of the amendment application, the petitioner has not given any reason for his failure to amend the plaint seeking relief of declaration prior to commencement of trial. Now the suit is disposed of and the matter is at First Appellate stage. Therefore, the petitioner failed to comply with the Proviso to Rule 17 of Order VI of CPC by assigning sufficient reasons to convince the Court that in spite of exercise of due diligence, he was unable to file an application for amendment seeking inclusion of prayer for declaration before commencement of trial. Hence, the amendment application filed by the petitioner deserves to be dismissed. If the petitioner is allowed to include the new prayer for declaration, an opportunity shall be given to the parties. It would amount to ordering retrial.

4. In such circumstances, I do not find any error in the order passed by the Appellate Court, dismissing the amendment application and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

23.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.SOUNTHAR, J.

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To

The Special Subordinate Court-II,
Jayakondam.

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23.02.2024