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CRP.No.2418 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HON'BLE MR. JUSTICE P.DHANABAL

**C.R.P.No.2418 of 2022 and
C.M.P.No.12541 of 2022**

Nagakanni

... Petitioners

Vs.

1. Pichaikkaran

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.250 of 2018 in A.S.No.79 of 2017 on the file of the Sub-court, Ulunderpet dated 01.02.2022 and allow the civil revision petition.

For Petitioner : V. Shanmugasundaram

For Respondent : NA

ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.250 of 2018 in A.S.No.79 of 2017 on the file of Sub Court,



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Ulundurpet dated 01.02.2002. Before the trial Court, the petitioner herein has filed an application under Order VI Rule 17 of C.P.C to amend the pleadings and the same was dismissed. As against the order, the present Civil Revision Petition is filed.

2. According to the petitioner, he is the petitioner herein and appellant in the main appeal. During the pendency of the suit before the trial Court, in the first item of the property, the defendant constructed a house. Therefore the petitioner herein filed a petition to amend the prayer in I.A.No.441 of 2016 and the same was allowed on 24.09.2014. In the said petition, he sought for prayer for the demolition and recovery of possession instead of declaration, demolition and recovery of possession due to typographical error. But the court fee was paid under section 25(a) of Tamil Nadu Court-fees and Suits Valuation Act, 1955.

3. Based on the aforesaid amendment, the defendants also filed an additional written statement and thereafter, the suit was dismissed on 16.03.2016 as the prayer for declaration has not been sought for. Therefore the suit was dismissed. Hence, the petitioner/ plaintiff herein filed a petition to amend the prayer.

4. No counter was filed as there was no appearance for the



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respondent in the present revision petition. However, before the trial Court, the respondents have filed counter stating that when the suit is pending for trial before the trial Court, the petitioner has not sought prayer for declaration, but sought prayer only for the relief of recovery of possession, demolition and mandatory injunction. The petitioner very well know about the case and dispute between the properties, however, not filed the suit for relief of declaration in respect of property thereby, after the judgment of the trial Court, the petitioner cannot be permitted to amend the plaint at this stage of appeal. Therefore strongly objected for amendment of prayer.

5. The learned counsel for the petitioner contended that in fact, initially, the suit was filed by the plaintiff for the relief of declaration and injunction and therefore during the pendency of the suit, the defendant therein put up construction and thereby the prayer was altered for mandatory injunction and recovery of possession. At that time, the prayer for declaration was wrongly omitted due to typographical error. Therefore the trial Court has dismissed the suit on the ground that without seeking any relief of declaration the relieves of mandatory injunction and recovery of possession, it cannot be granted. Therefore the petitioner filed an application before the first Appellate Court to amend the prayer.



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5.1. The first Appellate Court dismissed the petition on the ground that the petitioners wantonly omitted to sought for the relief of declaration and not accepted the contention of the petitioner and dismissed the petition. The above said observation of the trial Court is liable to be set aside and the error is due to typographical error and not wanton or wilful. Therefore the order passed by the trial Court is liable to be set aside.

6. No representation for the respondent and this Court heard the learned counsel for the petitioner and perused the materials available on record.

7. On perusal of the materials, it is observed that initially the plaintiff filed suit for the relief of declaration and permanent injunction only. Thereafter the plaint was amended and in the amended plaint, the prayer in respect of the declaration was deleted and the prayer sought for recovery of possession and also for permanent injunction. In the petition filed for amendment, the petitioners stated about the details of amendment and stated to delete the first prayer and include the prayer as follows:

“To grant decree and mandatory injunction and recovery of possession in respect of the first item of property. mandatory injunction to remove the construction made by the



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defendant in the first item of property and to recover the possession”.

8. Earlier, the prayer was sought for declaration. Further the Court fee paid under section 25(a) of the Tamil Nadu Court-fees and Suits Valuation Act, 1955 and it shows that the plaintiff sought for relief of declaration and recovery of possession. Therefore the contention of the learned counsel for the petitioner that due to typographical error, the prayer for declaration was omitted and the same is acceptable one. The trial Court in its detailed order, came to a conclusion that the petitioner has sought for amendment in respect of the prayer and the same was allowed. Earlier prayer for declaration was deleted and the new prayer for mandatory injunction and recovery of possession was added and therefore, after knowing very well that the prayer for declaration was deleted, they included the prayer for mandatory injunction and recovery of possession and the above said act is not typographical error. The trial Court has failed to consider that initially the prayer for declaration was sought for and the same was deleted and new prayer was included but payment of court fee was under section 25(a) of Tamil Nadu Court-fees and Suits Valuation Act, 1955. It shows that the suit is filed for declaration and recovery of possession. Therefore considering the



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nature of suit and the relief sought for in the suit, the amendment to prayer is to be allowed by allowing this petition. Therefore the order passed by the trial Court declining to entertain the amended application is unsustainable and therefore is liable to be set aside. The order passed in I.A.No.250 of 2018 in A.S.No.79 of 2017 on the file of the Sub-court, Ulunderpet dated 01.02.2022 is set aside.

9. In the result, the Civil Revision Petition is allowed and the order passed by the Sub-Court, Ulundurpet in I.A.No.250 of 2018 in A.S.No.79 of 2017 is set aside and the petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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