



CRP.No.3048 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.3048 of 2022
and CMP.No.16439 of 2022

Vaajbunnisa

... Petitioner

Vs

1.The Commissioner
Hindu Religious and Charitable Endowments
Nungambakkam High Road
Chennai.

2.The Joint Commissioner
Hindu Religious and Charitable Endowments
Sammantharkoil Sannathi Street
Sitharkadu, Mayiladuthurai Taluk.

3.The Assistant Commissioner
Hindu Religious and Charitable Endowments
Kumbakonam Town
Kumbakonam.

4.The Executive Officer
A/m. Amaruvi Perumal Thirukovil
Therazhanthur
Kuttalam Taluk
Mayiladuthurai District.

... Respondents



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Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 27.06.2022, made in I.A.No.6/2022 in O.S.No.245/2019 passed by the Principal District Munsif Court, Mayiladuthurai.

For Petitioner : Mr.B.Jawahar

For Respondents : Dr.S.Suriya, Addl. Govt. Pleader

ORDER

This civil revision petition arises against the order of the learned Principal District Munsif, Mayiladuthurai in dismissing the amendment application in I.A.No.6/2022 in O.S.No.245/2019, in and by way of his order dated 27.06.2022.

2. The case of the petitioner is that the suit property originally belonged to one Ramasamy Konar. On his demise, his wife Kamalammal sold the property to one Noorullah, who is none other than the husband of the petitioner herein. Thereafter, Noorullah had put up a construction in the suit property and was assessed to taxes. As Noorullah passed away sometime in 2015, the property came to the hands of the petitioner, Vaajbunnisa.



According to the petitioner, Ramasamy Konar was granted patta for 9 cents of land in suit Survey No.57/2A, but he was in actual enjoyment of 16 cents.

3. The cause of action in the suit arose in 2019 when the Assistant Commissioner, HR&CE, Kumbakkonam issued a notice on 16.08.2019 to the petitioner and Ramasamy Konar, intimating that the suit property is a temple property and Ramasamy Konar is an encroacher of the said property, and that the authorities are in the process of taking possession of the property in terms of Section 79 of the HR&CE Act.

4. The petitioner would argue that Ramasamy Konar has passed away even before 2000, subsequent to which, the suit property was purchased by her husband Noorullah on 07.06.2000 from the wife of Ramasamy Konar, and he thereafter had put up a construction. On the demise of her husband Noorullah, the petitioner herein has now become the owner of the property. Ever since, she has been in continuous possession and peaceful enjoyment of the property.

5. Be that as it may, the respondents herein had issued proceedings



under HR&CE Act. According to her, she is entitled to seek a relief for declaration to declare that the proceedings initiated by the defendants/respondents against Ramasamy Konar is null and void, and hence, she filed a suit in O.S.No.245/2019 for the said relief. In the plaint, she had also mentioned the total extent of land as 16 cents in RS.No.57/2A with specific boundaries. However, pending the suit proceedings, she noticed that the extent of the land mentioned in the order impugned before the trial Court, shows 5,856 sq.ft. whereas the actual extent should read as 6,950 sq.ft., That apart, the old survey number of the suit property had been substituted with new survey number. Therefore, she filed an amendment application in I.A.No.06/2022 to correct the extent of the property as well as to incorporate the new survey number in the suit schedule.

6. The said application in I.A.No.06/2022 was resisted by the respondents stating that the trial had already commenced and therefore, the petitioner is not entitled to amend the plaint.

7. The learned Trial Judge has accepted the plea of the respondents and dismissed the application in I.A.No.06/2022, against which the present



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revision is filed.

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8. Heard Mr.B.Jawahar for the petitioner and Dr.S.Suriya, learned Additional Government Pleader for the respondents.

9. I am unable to understand as to why this amendment application had been filed at all. The suit is filed not to declare the title of the petitioner/plaintiff, but only to declare that the proceedings initiated by HR&CE Department is null and void. The plaintiff/revision petitioner has not sought for declaration of her title in the suit property, in which case, she can take out an application to amend the survey number, correct the extent of the property, if required. The case of the plaintiff is that the property originally belonged to Ramasamy Konar, and not to the temple. If she succeeds in proving the said fact, then the proceedings initiated by the HR&CE, irrespective of the survey number and the extent, will be unforced. On the contrary, if she fails to prove that the property is of Ramasamy Konar, and the temple is able to prove that the property belongs to its institution, then the suit will have to fail. In such a proceedings, the extent becomes irrelevant. It is also a settled principle of law that boundaries prevail over the extent and



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if the plaintiff is able to prove that she is the owner of the property for that extent, then she is obviously entitled to succeed. For the said purpose, the amendment application is not necessary. Furthermore, as per the amendment made to Order VI Rule 17, a proviso stands inserted, which specifically speaks about due diligence by the plaintiff, that once the trial has commenced, no application for amendment can be allowed. There is nothing on record to show that despite due diligence, the petitioner was not in a position to give correct details. Therefore, I am not in a position to interfere with the order of the learned Principal District Munsif, Mayiladuthurai passed in I.A.No.6/2022 in O.S.No.245/2019, dated 27.06.2022.

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

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Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
ds



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- To:
- 1.The Principal District Munsif
Mayiladuthurai.
 - 2.The Section Officer
VR Section
High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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