



C.R.P.(PD).No.3564 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3564 of 2024

&

C.M.P.No.19304 of 2024

1.Durai @ Venkatraj

2.Venkatesan

3.Krishnaveni

...Petitioners

Vs.

Kamala

...Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.03.2024 in I.A.No.12 of 2023 in O.S.No.60 of 2014 on the file of the District Munsif Court, Mettur, Salem.

For Petitioner : Mr. A.Ashok Kumar



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ORDER

This Civil Revision Petition arises against the order of the learned District Munsif, Mettur, Salem in I.A.No.12 of 2023 in O.S.No.60 of 2014 dated 25.03.2024.

2. O.S.No.60 of 2014 is a suit for permanent injunction restraining the defendants from interfering or trespassing into plaintiff's peaceful possession and enjoyment of the suit property by way of construction. Evidence in the said suit is completed. The matter is posted for arguments. At this stage, the plaintiff took out I.A.No.12 of 2023 for amendment.

3. The plea of the plaintiff is that she had obtained possession of the property, pursuant to a decree in E.P.No.4 of 2012 on the file of the learned District Munsif, Mettur. Instead of mentioning the number as



E.P.No.4 of 2012, in paragraph no.5 of the plaint, it was wrongly mentioned as E.P.No.4 of 2011. Realising this typographical error, the plaintiff filed an application for amendment.

4. After receipt of the counter from the defendants, the application was allowed on condition the plaintiff pays a sum of Rs.2,000/- to the defendants / petitioners. Hence, the revision.

5. Heard Mr. A.Ashok Kumar for the civil revision petitioners.

6. Mr. Ashok Kumar would vehemently contend as follows:

(i)Allowing the amendment petition is contrary to the orders passed by this Court in C.R.P.(PD).Nos.1858 & 1860 of 2022 dated 20.07.2022.

(ii)Proviso to Order VI Rule 17 of the Code of Civil Procedure bars the plaintiff from seeking for amendment, once evidence has been completed.

(iii)The entire idea of the plaintiff is to file this amendment



application and indirectly re-open the evidence which has been concluded by the Court.

7. I have carefully considered the arguments of Mr. A.Ashok Kumar.

8. The proviso to Order VI Rule 17 of the Code of Civil Procedure does not totally bar an application for amendment. A higher test of “*due diligence*” has to be cleared before an amendment is ordered. The purpose of the proviso has to be seen from the main provision. In case, the amendment is going to change the cause of action or the frame of the suit, it certainly cannot be permitted at any stage, pre trial or post trial.

9. However, in this case, the claim of the plaintiff itself is on the basis of the sale deed that was executed pursuant to the decree obtained in O.S.No.324 of 2009 dated 29.01.2010. She would plead that she had filed an application for delivery and that application was in E.P.No.4 of



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2012. This typographical error which is sought to be rectified in I.A.No.12 of 2023. The proviso to Order VI Rule 17 of the Code of Civil Procedure, would not bar to rectify typographical errors.

10. Therefore, I do not find any reason to interfere with the order passed by the learned District Munsif, Mettur, Salem. Since the correction is only on typographical error, the learned Trial Judge shall take note of the order passed by this Court in C.R.P.(PD).Nos. 1858 and 1860 of 2022 dated 20.07.2022. The Trial Court shall receive the amended plaint copy for the purpose of record. The learned Trial Judge shall not permit the parties to let in fresh evidence on the basis of the amended plaint.

11. With the above observation, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

04.09.2024

Index : Yes/No



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Internet : Yes/No
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To

The District Munsif,
Mettur,
Salem.



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V.LAKSHMINARAYANAN, J.

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