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C.R.P.No.3750 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3750 of 2024
and
C.M.P. No. 20386 of 2024

G.Suresh Kumar

... Petitioner

Vs.

1. The District Collector,
Collectorate,
Tiruvallur District.

2. The Tahsildar,
Taluk Office,
Poonamallee,
Chennai – 600 056.

3. The Executive Officer,
Thirumazhilasai,
Poonamallee Taluk,
Thiruvallur District.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decretal order dated 01.04.2024 passed in I.A.No.01 of 2023 in O.S.No.206 of 2017 on the file of the learned Subordinate Judge, Poonamallee.



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For Petitioner : Mr.R.Prabakar
For Respondents : Mr.T.Arun Kumar
Additional Government Pleader

ORDER

The Civil Revision petitioner is the plaintiff in the suit. He presented the suit for the relief of declaration of his title and for recovery of possession of 'B' Schedule mentioned property.

2. According to the plaintiff, the third defendant, namely the Executive Officer, Thirumazhilasai Town Panchayat had encroached upon an extent of 656 sq.ft and had laid a road over the same. On service of summons, the Executive Officer entered appearance and had filed a detailed written statement. He would point out that the third defendant is not a Municipality as shown in the cause title, but only a Town Panchayat. He would further point out that insofar as 'B' schedule mentioned property is concerned, he had not encroached upon the same. The parties went for trial and the plaintiff has completed the examination.

3. At that stage, he took out an application in I.A.No.1 of 2023 seeking



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for an amendment of the plaint. The amendment that he sought for was to correct the cause title of the third defendant, who has been described as the Executive Officer, Thirumazhilasai Municipality to the Executive Officer, Thirumazhilasai Town Panchayat. Apart from that, he wanted to give a detailed description of the four boundaries of 'B' schedule mentioned properties. On notice being ordered by the learned Subordinate Judge, Poonamallee, in the said application, the third respondent filed a detailed counter opposing the same. The learned trial Judge dismissed the application in and by order dated 01.04.2024. Hence, this Civil Revision Petition.

4. Heard Mr.R.Prabakar, learned counsel for the Civil Revision Petitioner and Mr.T.Arun Kumar, learned Additional Government Pleader for the respondents.

5. Mr.R.Prabakar would submit that by allowing the amendment application, neither the cause of action, nor the relief sought in the suit is changed. He would point out that insofar as the first relief is concerned, it is only a typographical error and it can be corrected at any stage of proceedings including in a second appeal.

6. Mr.T.Arun Kumar would invite my attention to the proviso to Order VI Rule 17 C.P.C and would point out that the defendants had raised a plea as



early as 10.01.2018 when they presented the written statement and it was with much delay after a period of five years, that the said application came to be filed. He would state that if the amendment is ordered, serious prejudice would be caused to the defendants and therefore, he would request that the order of the learned Subordinate Judge stands confirmed.

7. I carefully considered the arguments of either side.

8. Insofar as the first portion of the prayer is concerned, it is only a mis-description of the authority. It is not in dispute that Thirumazhilasai is only Town Panchayat and not a Municipality. The plaintiff, under misconception, had described Thirumazhilasai Town Panchayat as Thirumazhilasai Municipality and would want to correct the mistake by way of amendment application. A plaintiff informs his counsel to draft a plaint and the mistake in typing the name of the third defendant, which is a mistake at the time of drafting can only be treated as a mis-description. It is fatal to the proceedings.

9. With respect to the second portion of the prayer, a perusal of the plaint shows that it is the specific case of the plaintiff is that 'A' schedule



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mentioned property had been settled in his favour by his father in 2015 and that 'B' schedule is a part of 'A' schedule property. There have been other proceedings that have taken place between the parties with respect to the suit property including the writ petitions in W.P.No.18333 of 2014 and W.P.No.28934 of 2016. Therefore, there is no confusion on the identity of the property.

10. The specific case of the plaintiff is that an extent of 656 sq.ft had been encroached by the defendants. Unfortunately, while describing 'B' schedule property, he had not given the four boundaries to the same. By way of the amendment, he only seeks to add the four boundaries to the suit property. The extent of the suit property continue to remain the same.

11. In a suit for recovery of possession, the plaintiff, in terms of Order VII Rule 3 CPC, has to give certain details. The Code demands the plaintiff to give the boundaries and survey numbers of the property. By virtue of the amendment, the plaintiff is not changing the suit schedule mentioned property, but is only clarifying as to where the property lies.

12. With respect to the plea of Mr.T.Arun Kumar, that by granting the amendment, it will violate the proviso to Order VI Rule 17 C.P.C. I have to



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point out that the said provision does not take away the power of the Court to grant amendment in its entirety. All that it does is to place a higher bar by calling upon the plaintiff to show that despite exercise of due diligence, he was not in a position to seek for the said amendment. A look at the plaint shows that the plaintiff had specifically pleaded that 'B' schedule is a part of a larger extent of 'A' schedule. The plaintiff has given an extent of alleged encroachment made by the third defendant on 'A' schedule. All that he had not given is a description as to where the four boundaries lies. The proviso to Order VI Rule 17 C.P.C does not bar such clarificatory amendments. The present amendment is one such.

13. In the light of the vehement opposition made by Mr.T.Arun Kumar to the revision petition, I am of the view that if the plaintiff is called upon to pay costs in the application, it will serve the ends of justice.

14. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.1 of 2023 in O.S.No.206 of 2017 dated 01.04.2024 is set aside. The Civil Revision Petitioner shall pay costs of Rs.5,000/- (Rupees Five Thousand Only) to Mr.T.Arun Kumar, learned Additional Government Pleader, who opposed the revision in this Court. The said costs shall be paid within a period of one week from today. Consequently, connected



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miscellaneous petition is closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

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V.LAKSHMINARAYANAN, J

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C.R.P.No.3750 of 2024
and
C.M.P. No. 19642 of 2024

23.09.2024