



C.R.P. No. 4059 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 23.07.2024

CORAM

**THE HONOURABLE MR. JUSTICE P.DHANABAL**

**C.R.P. No. 4059 of 2022**

**and**

**C.M.P. No. 21040 of 2022**

1. Balachandar

2. Saravangmiya

... Petitioners / Petitioners / Plaintiffs

Vs.

1. Kalyanasundaram

2. Rajasekar

... Respondents / Respondents / Defendants

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and final order dated 26.08.2022 in I.A. No. 93 of 2022 in O.S. No. 93 of 2016 on the file of the District Munsif cum Judicial Magistrate, Vanur.

For Petitioners : Mr. A.K.Kumarasamy, Senior Counsel  
for Mr. S.Kaithamalai Kumaran

For R1 : Mr. V.Balamurugan

For R2 : Given up

**ORDER**

This Civil Revision Petition has been preferred as against the order dated 26.08.2022 passed in I.A. No. 93 of 2022 in O.S. No. 93 of 2016 on the file of the District Munsif cum Judicial Magistrate, Vanur, wherein, the



petitioners herein have filed petition before the Trial Court to amend the  
plaint under Order VI Rule 17 of CPC and the same was dismissed.

2. The petitioners are the plaintiffs in the main suit and they filed suit for the relief of permanent injunction and other reliefs. During the pendency of the suit, they filed an application to amend the plaint prayer and delete the second item of the property and include the petition mentioned property. The Trial Court dismissed the petition. According to the petitioners, originally the suit was filed only for the relief of permanent injunction and then filed amendment petition to amend the prayer for declaration of title. The Trial Court, without considering the case of the petitioners, dismissed the petition.

3. According to the respondents, the case was filed in the year 2016 and after 6 years, they filed application to amend the prayer and to include the fresh survey number as second item and the claim is barred by limitation and the inclusion of property would change the nature and character of the suit and thereby, the petition is not maintainable. The trial was also commenced. Therefore, the Trial Court has correctly dismissed the application.

4. Before the Trial Court, no oral or documentary evidences adduced on either side. The Trial Court, after hearing both sides, dismissed the petition.



5. The learned counsel appearing for the petitioners would contend that the petitioners have filed suit for the relief of permanent injunction and the respondents have taken plea that they purchased the property in the name of the respondents and thereby, they want to amend the prayer for declaration and at the time of drafting the plaint, the second item of the property was wrongly mentioned. Therefore, the second item of the property has to be deleted and the petition mentioned property has to be included as second item of the property. But the Trial Court, without considering the nature of amendment, dismissed the petition by holding that the petitioners have not obtained any permission under Order II Rule 2 of the CPC and already the schedule of the property was amended as per I.A. No. 272 of 2018 and again, they filed this petition for deleting the second item of the property and to introduce the new survey number of the property. It will change the original cause of action and hence, dismissed the petition. The above said observation of the Trial Court is unsustainable and the same is liable to set aside. Therefore, the order passed by the Trial Court is liable to be set aside.

6. The learned counsel appearing for the respondents would contend that the suit was filed in the year 2016 for the relief of permanent injunction and the petitioners did not file any application immediately after the filing of



the written statement. The written statement was filed on 07.08.2017. While so, the petitioners have not taken any steps to amend the prayer immediately after the filing of the written statement and after 5 years from the date of filing of written statement, they filed the present petition. Therefore, the petition is barred by limitation and the inclusion of fresh survey number in the suit will alter the nature and character of the suit. Therefore, the Trial Court has passed a reasoned order and the present Civil Revision Petition is liable to be dismissed.

7. This Court heard both sides and perused the materials available on record.

8. In this case, it is an admitted fact that the amendment petition was filed after 5 years from the date of filing of written statement and the trial also commenced at the time of filing the application and now the case was posted for arguments. The petitioners have not stated any valid reasons for the delay in filing the application to amend the plaint prayer for declaration and the same is time barred claim. Further, the inclusion of property with new survey number also will alter the nature and character of the suit. Since the suit is only for permanent injunction, the petitioners can take action in respect



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of the second item of the property which is sought to be included by way of separate proceedings. The case was posted for arguments after completion of trial. At this stage, the petition was filed for amendment without any valid reasons. The present amendment certainly will alter the nature and character of the suit. Thereby, the Trial Court has correctly dismissed the petition. However, the Trial Court observed that the claim is barred under Order II Rule 2 of the CPC. At the time of deciding the petition for amendment, the Court cannot decide the matter in respect of bar under Order II Rule of the CPC. Therefore, that observation by the Trial Court is unsustainable. In other aspect, the Trial Court order is proper and in order.

9. In view of the aforesaid discussions, this Court is of the opinion that the Civil Revision Petition has no merits and deserves to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

**23.07.2024**

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

To

The District Munsif cum Judicial Magistrate, Vanur.



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**P.DHANABAL, J.,**

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