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C.R.P.[NPD].No.253 of 2023
and C.M.P.No.2060 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.253 of 2023
and C.M.P.No.2060 of 2023

D.Narasimman

.. Petitioner

Vs.

Rajendiran (Died)
1.M.Ramakrishnan
2.R.Kanthammal
3.R.Ganapathi
4.R.Devendiran

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.09.2022 passed in I.A.No.1 of 2021 in A.S.No.13 of 2022, on the file of the Sub-Court, Katpadi, Vellore District.

For Petitioner : Mr.P.A.Sudesh Kumar

For R1 to R4 : Mr.K.Sivasubramanian



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ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 21.09.2022 passed in I.A.No.1 of 2021 in A.S.No.13 of 2022, on the file of the Sub-Court, Katpadi, Vellore District.

2.The brief facts of the case are as follows:

2.1.The suit has been originally filed by the petitioner for declaration and also for grant of permanent injunction. The trial Court dismissed the suit in respect of declaration of suit property. Against which, the petitioner has preferred an appeal in A.S.No.13 of 2022. Pending appeal, the petitioner filed an application in I.A.No.1 of 2021, seeking to amend the measurements of the schedule mentioned property. The Appellate Court, after considering the submissions of both the parties, dismissed the said application on the ground that the amendment petition is not maintainable at the appellate stage and it would change the nature and character of the suit. Aggrieved over the same, the present Civil Revision Petition has been filed.



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3.Learned counsel appearing for the petitioner submitted that the proposed amendment would not change the character of the suit. Only the extent of encroachment made by the defendant has to be amended. Whereas, the Appellate Court without considering the issue has dismissed the application.

4.Learned counsel appearing for the respondents 1 to 4 submitted that the amendment which has been sought to be include is the other extent which has not been made in the plaint and the amendment has been sought after a period of 10 years from the date of filing of the Commissioner's report. Therefore, if the amendment is allowed, it will change the character of the suit. Hence, he prayed to dismiss the Civil Revision Petition.

5.Heard the learned counsel appearing for the petitioner as well as the respondents and perused the materials available on record.

6.The issue to be decided is whether the amendment sought in the suit



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completely change the character of the suit or not? It is not in dispute that the suit laid for mandatory injunction in respect of the property in Survey No.243/2. Of course while claiming mandatory injunction the extent of the property was not mentioned by the plaintiff in the entire plaint. However, the fact remains that the parties went on trial in respect of Survey No.243/2. The Commissioner appointed by the trial Court had filed a report. His report disclose certain extent of area has said to be have been encroached by the respondent. However, the suit came to be dismissed.

7.Now, the petitioner sought to amend the extent of area of encroachment as identified by the Commissioner inorder to seek relief in the form of mandatory injunction. Therefore, this Court is of the view that when the survey number is not in dispute and the prayer has already made in the suit for removal of encroachment in the said survey number, now attempt has been made only to mention the extent of encroachment, it cannot be said that the proposed amendment will fundamentally change the nature of case. Mere including the extent of measurement as identified by the Commissioner appointed by the Court below will not cause prejudice to the



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defendant. The contention of the respondent that the amendment after the commencement of trial cannot be maintainable has no force. Though Order 6 Rule 17 CPC restricts amendment after the trial has commenced such provision is not mandatory when the Court comes to the conclusion that the party pleaded with due diligence.

8.The order passed by the Appellate Court in I.A.No.1 of 2021 in A.S.No.13 of 2022 is set aside and the petitioner shall carryout the amendment within a period of 14 days from the date of receipt of a copy of this order. The Appellate Court shall give an opportunity to file written statement in this regard and shall proceed the appeal on its own merits and dispose of the same within a period of four months thereafter.

9.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

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Internet: Yes/No
Speaking/Non-Speaking Order

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N.SATHISH KUMAR, J.

rst

To:

The Sub-Court, Katpadi,
Vellore District.

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