



CMP.No.754 of 2024.

CMP.No.754 of 2024
in CRP.No.4199 of 2023

WEB COPY

T.V.THAMILSELVI,J.

This petition has been filed to recall the order dated 08.11.2023 in **C.R.P.No.4199** of 2023 passed by this Court.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

3. The learned counsel for the petitioner submitted that the proposed amendment claimed by the respondents 1 and 2, it would change the character of the suit. He further submitted that the said amendment petition ought not to have been allowed to that effect, he relied the following authority in ***Asian Hotels (North) Limited Vs.Alok Kumar Lodha and Others (2022) 8 SCC 145:-***

"---Impediment of respective banks/financial institution as party defendant ---- Denial of --- Whether proper --- Amendment to suit --- Considering of, as a change of nature of the suit (see Shortnote B) ---- Principle of plaintiff being the dominus litis---- When application)see Short note C)"



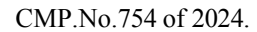
CMP.No.754 of 2024.

Further, the learned counsel for the petitioner has relied on the

Judgement in ***Revajeetu Builders & Developers Vs.Narayanaswamy & Sons & Others.***

4. Admittedly, the suit was filed by the plaintiff/respondents 1 and 2 herein for the relief of declaration and permanent injunction in O.S.No.464 of 2015, as on date, the trial was not begun, hence, the respondents 1 and 2/plaintiff filed an application to amend the pleadings as well as the prayer sought for in the plaint in O.S.No.464 of 2015 to include the relief of adverse possession based upon the averments in para 4,7,10 of the plaint.

5. Accordingly, the respondents 1 and 2 have enjoyment of the suit property without any interference, hence they want to amend the pleadings, but now, the petitioner/5th defendant strongly objected stating that the said proposed amendment in respect of adverse possession would change the character of the suit. Further, the plaintiffs and the 5th defendant/petitioner herein are not belongs to one family, both are neighbour land owners. As per the plaintiff contention that more than 40 years, they have enjoyed the suit property. Therefore, the plaintiff has right over the



6. On a perusal of the records, it reveals that now the suit was filed by the plaintiffs for the relief of declaration, thereby they claimed title over the property, but the 5th defendant/petitioner herein denied the claim of the plaintiffs. Further, before commencement of trial, the application for amendment has been filed by the plaintiffs/respondents 1 and 2. Therefore, this Court of the view that if the amendment application is allowed, it would not change the character of the suit and there is no necessity to recall the order dated 08.11.2023 in CRP.No.4199 of 2023

02.02.2024

msrm



WEB COPY



CMP.No.754 of 2024.

T.V.THAMILSELVI, J.

msrm

CMP.No.754 of 2024
in CRP.No.4199 of 2023

02.02.2024