



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.398 of 2021

and

C.M.P.(MD)No.2159 of 2021

P.Rajesh Prasanna

... Petitioner

-VS.-

The Commissioner,
Padmanabhapuram Municipality,
Thuckalay Post, Thuckalay Village,
Kalkulam Taluk, Kanniyakumari District.

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order dated 12.12.2020 in I.A.No.3 of 2020 in O.S.No. 145 of 2015 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Petitioner :Mr.P.Puhazh Gandhi
For Respondent :Mr.P.Athimoola Pandian



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ORDER

The Civil Revision Petition has been filed challenging the order passed in I.No.3 of 2020 in O.S.No.145 of 2015, dated 12.12.2020 by the learned Principal District Munsif, Padmanabhapuram.

2.The Revision Petitioner is the plaintiff in the suit. The suit was filed by the plaintiff with a prayer to demarcate the suit property with reference to sale deed No.1394/1991, dated 09.07.1991 and 2577 and 2578, dated 29.12.1991. When the suit was in progress, an Advocate Commissioner was appointed and the Advocate Commissioner has filed his report in which, the Advocate Commissioner has stated that in S.No.B11/143, the extent available is 7.82 cents and in S.No.B11/154, the extent available is 4.68 cents, altogether 12.5 cents, where, the plaintiff has filed the suit claiming 10 cents altogether. Based on the report and plans of the Advocate Commissioner, which were marked as Ex-C1 to C3, the petitioner/plaintiff filed an application in I.A.No.3 of 2020 for making an amendment.



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3.The trial Court had rejected the application in I.No.3 of 2020 in O.S.No.145 of 2015 on the ground that the petitioner/plaintiff had remained as a mute spectator and the petitioner/plaintiff had come to the Court claiming an extent of 10 cents, whereas, in the Advocate Commissioner's report, the extent available is 12.5 cents and dismissed the same. Aggrieved against which, the plaintiff has preferred the present Civil Revision Petition.

4.The learned Counsel for the petitioner submitted that the suit itself is only for demarcation and the petitioner/plaintiff had quoted the smaller extent of land in the suit prayer and the exact measurement has been came to know to the plaintiff only when the Advocate Commissioner had filed his plans and report, which were marked as Ex-C1 to Ex-C3.

5.The next contention of the learned Counsel for the petitioner is that the trial Court has only stated that the petitioner had not filed the application in time and he has made this application belatedly. In this connection, the learned Counsel appearing for the petitioner relied upon a judgment of the Hon'ble



Supreme Court reported in (2012) 5 SCC 337, between **Rameshkumar Agarwal vs Rajmala Exports Private Limited and others**, wherein, the Hon'ble Supreme Court held as follows:

“20. In Revajeetu Builders & Developers v. Narayanaswamy & Sons [(2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37] this Court once again considered the scope of amendment of pleadings. In para 63, it concluded as follows: (SCC p. 102)

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”



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6. With regard to sub clause (5), namely, whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case, the claim of the plaintiff in the suit is with regard to 10 cents and whereas the report of the Advocate Commissioner reveals it is 12.5 cents. The extent of 10 cents or 12.5 cents will admittedly change the nature of the claim made by the plaintiff in the suit.

7. As the Revision Petitioner had taken cognizance based on the report of the Advocate Commissioner and filed the amendment petition belatedly, this Court is of the view that the order of the trial Court needs no interference. Accordingly, the Civil Revision Petition is dismissed. It is not in dispute that the trial has commenced and PW-2 was examined and the suit is of the year 2015, the trial Court is directed to conclude the trial within a period of one year from the date of receipt of a copy of this order. The trial Court had de horsed the contentions made by the plaintiff with regard to 12 cents or 10 cents shall look into the averments of the plaint pleaded and proved at the time of trial. The trial Court can independently look into the report of the Advocate Commissioner.



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8. With the above directions, the Civil Revision Petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

06.12.2024

Internet : Yes/No
NCC : Yes/No
Index : Yes/No

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To

The Principal District Munsif, Padmanabhapuram.



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N.SENTHILKUMAR, J.

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