



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.821 of 2021 and
C.M.P.(MD)No.4409 of 2021

P.Aravind

... Petitioner

-VS.-

C.Seenivasan

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair order and decretal order passed in I.A.No.1 of 2020 in A.S.No.94 of 2019 dated 21.01.2021 on the file of the Additional Subordinate Judge, Tirunelveli.

For Petitioner :Mr.T.Selvan
For Respondent :Mr.Ramachandran
for Mr.K.Kumaravel

ORDER

The Civil Revision Petition has been filed challenging the order passed by the learned Additional Subordinate Judge, Tirunelveli, in I.A.No.1 of 2020



2.The Revision Petitioner is the plaintiff in the suit in O.S.No.32 of 2016 on the file of the I Additional District Munsif Court, Tirunelveli. The suit was filed for declaration and for injunction. The said suit dismissed by judgment, dated 21.01.2021. Challenging the same, the petitioner/plaintiff had preferred an appeal in A.S.No.94 of 2019 before the Additional Subordinate Court, Tirunelveli.

3.During the pendency of the appeal suit, the petitioner/appellant filed an application in I.A.No.01 of 2020 in A.S.No.94 of 2019 under Order VI Rule 17 and 18 r/w Section 151 CPC to amend the plaint schedule. The first appellate Court had dismissed the said application on the ground that the appellant/plaintiff had not proved the extent of land, as claimed in the suit and that such an amendment cannot be made. Hence, the present Civil Revision Petition.

4.The learned Counsel for the petitioner submitted that the first appellate



Court was erred in dismissing the application filed by the petitioner, as the amendment will not change the character of the suit. The learned Counsel further submitted that the petitioner has only restricted his claim from 1 acre 65 cents to 1 acre and 34 cents.

5.The learned Counsel for the respondent contended that in view of Section 99 and 99A of CPC, such an exercise cannot be done by the appellate Court and the appellate Court has rightly dismissed the said application which is now under challenge.

6.At this juncture, the learned Counsel for the Revision Petitioner contended that this stand taken by the petitioner in the interlocutory application was the arguments advanced by the learned Counsel for the plaintiff during trial. This Court cannot venture into the arguments advanced by the plaintiff and the counter arguments made by the learned Counsel for the defendant.

7.It is not in dispute that there is an embargo created as per Section 99



and 99A CPC and as it is rightly pointed out by the learned Counsel for the respondent, there cannot be any modification or to reverse a decree passed by the trial Court and unless and until, it is prejudicially affecting the case of the plaintiff, which has been projected by the petitioner/plaintiff. In view of the same, this Court is of the considered opinion the order passed by the first appellate Court needs no interference and the Civil Revision Petition is dismissed.

8. At the stage, the learned Counsel for the petitioner as well as the learned Counsel for the respondent contended that the appeal itself is right for argument. As the case is at the advanced stage of hearing, the first appellate Court is directed to conclude the appeal within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

04.12.2024

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

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To

The Additional Subordinate Judge, Tirunelveli.



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N.SENTHILKUMAR, J.

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