



WEB COPY

C.RP(MD)No1543 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

C.R.P(MD)No.1543 of 2024

and

C.M.P(MD)No.9099 of 2024

1.T.M.Maragatharaj
2.S.Navaneethakannan

... Petitioners/Respondents
1&2/Defendants 1&2

Vs.

T.Ponsiva Shanmuga Prakash

...Respondent/Petitioner/
Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.2 of 2023 in O.S.No.258 of 2014 dated 30.01.2024 on the file of the learned Sub-ordinate Judge, Tuticorin.

For Petitioners

:Mr.KA.Ramakrishnan

ORDER

The Civil Revision Petition is directed against the fair and decreetal order of the learned Subordinate Judge, Thoothukudi, dated 30.01.2024 made in I.A.No.2 of 2023 in OS.No.258 of 2014.



2.The plaintiff had originally filed the suit claiming right in respect of a larger extent of property. The defendants had filed a written statement categorically stating that the plaintiff's property has already been acquired for road purposes and he has mistakenly filed the suit by wrongly identifying the defendants' property. The defendants are in position and enjoyment of their own property, for which, they are having title and they have not encroached upon any of the plaintiff's property.

3.In the teeth of the same, the parties went into trial and an Advocate Commissioner was also appointed, who inspected and filed a report. Halfway through the trial, now the present application for amendment is filed. The prayer, which is sought for in the application is to amend the schedule of the property. By the amendment, the plaintiff wants to restrict the area, for which, he is making the claim and he is not altering the original schedule of the property. If that be so, according to this Court, such amendment itself need not be filed. Even if the plaintiff is claiming a larger extent and if the Court finds that he is entitled for a lesser extent, the same would have been ordered by the Court and the amendment itself was unnecessarily filed. Be that as it may, the trial Court thought it fit to allow the said amendment by the order which is assailed in the revision.



4.The learned counsel appearing on behalf of the petitioner would submit that in any event such an amendment could not have been permitted at this belated stage and the plaintiff in spite of due diligence, even though the written statement itself raises the specific plea, did not think it fit to move the amendment at the earlier stage and therefore, the amendment causes prejudice to the defendants.

5.As stated above, since the impugned amendment only results in reducing the extent of schedule mentioned property, all the defence which is taken by the defendant are intact and will not in any manner affect his defence. Originally, he has pleaded that he is only in position and enjoyment of his own property and has not encroached the plaintiff's property and the plaintiff's property has been acquired by the State. I do not see any grave prejudice which is caused to the petitioner. Since the amendment has already having been ordered, and the suit is of the year 2014. I am not inclined to entertain the Civil Revision Petition and accordingly, the Civil Revision Petition stands Dismissed. Since the suit is of the year 2014, trial Court is requested to take up the suit for early disposal and in any event, not later than four months from the date of receipt of the copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

12.07.2024

NCC:Yes/No



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To

1. The Sub-ordinate Judge,
Tuticorin.



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D.BHARATHA CHAKRAVARTHY, J.

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