



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.07.2024

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

**C.R.P(MD)No.1714 of 2024
and C.M.P(MD).No.9954 of 2024**

A.Murugesan

... Petitioner

Vs.

1.K.Anbazhagan
2.M.Karuppannan

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records in I.A.No.2 of 2023 in A.S.No.45 of 2023 on the file of the learned Subordinate Judge, Musiri, dated 11.03.2024.

For Petitioner

:Mr.Chamundi Bose

ORDER

This civil revision petition is filed against the order dated 11.03.2024 made in I.A.No.2 of 2023 in A.S.No.45 of 2023 on the file of the learned Subordinate Judge, Musiri.



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2. The said interlocutory application is filed pending the appeal suit to amend the paragraph No.3 of the plaint. It is the case of the petitioner that the A-schedule property and B-schedule property are different and B-schedule property does not form part of the A-schedule property. But, the statement, which is made otherwise in the plaint, is factually incorrect and it is made only by way of a cut and paste mistake. The learned counsel appearing on behalf of the petitioner would submit that if the entire case of the plaintiff is looked into, the said fact can be ascertained and since the amendment is only a formal in nature, the same could have been allowed at the appellate stage also.

3. I have considered the submission made by the learned counsel for the petitioner and perused the material records of the case.

4. A perusal of the order assailed in the civil revision petition, it can be seen that when the learned Presiding Officer has posed a question during the argument of the case, as to the statement of the plaintiff itself, immediately the present application for amendment is filed. As a matter of fact, if it is the case of the petitioner that otherwise from the plaint and otherwise from his evidence, it is their case that A-schedule and B-schedule



properties are not one and the same. Then, for the mere omission, his case need not be non-suited. Such an argument itself can be made before the appellate Court. Therefore, the amendment was not needed. But, if the case of the petitioner was that B-schedule property is a part of the A-schedule property and when the issues itself were framed and the parties went into trial with the said understanding, then, if the amendment is now permitted, that will change the very nature of the suit and therefore, in that case also the amendment cannot be allowed.

5. In view thereof, for the aforesaid reasons. I am of the view that the ultimate decision of the learned Subordinate Judge, Musiri, dated 11.03.2024 cannot be interfered. It would be open for the petitioner to advance such arguments before the lower Appellate Court. Accordingly, the Civil Revision Petition is disposed of, however, it will be open for the petitioner to argue before the Appellate Court itself that it was the slip or omission in paragraph No.3, but, however, in the entire case of the plaintiff was otherwise. No costs. Consequently, connected Miscellaneous Petition is closed.

31.07.2024

NCC:Yes/No
Index:Yes/No
Rmk



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To

The Subordinate Judge, Musiri.

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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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