



CRP(MD).No.1892 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2024

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1892 of 2022 and
CMP(MD).No. 8504 of 2022

Ellammal(died)

1.Sekar

2.Velu

3.Senthamarai

: Petitioners / defendants

Vs.

J.Vijayalakshmi

:Respondent / plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.223 of 2021 in O.S.No.159 of 2007 on the file of the Principal District Munsif Court, Thanjavur, dated 17.06.2022.

For Petitioners

:Mr.G.Karnan

For respondent

: Mr.P.Thiyagarajan

ORDER

This Civil Revision Petition has been filed to set aside the



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order, dated 17.06.2022 made in I.A.No.223 of 2021 in O.S.No.159 of 2007 on the file of the Principal District Munsif Court, Thanjavur.

2. The respondent as plaintiff filed a suit in O.S.No.159 of 2007 on the file of the Principal District Munsif Court, Thanjavur for the relief of declaration and recovery of possession. While so the revision petitioners herein / defendants have filed a suit in O.S.No.161 of 2006 for permanent injunction. However, the suit in O.S.No.161 of 2006 filed by the revisions petitioners was decreed and the suit filed by the respondent herein in O.S.No.159 of 2007 was dismissed by the trial Court. Against which, the respondent filed two appeal Suits in A.S.Nos.18 and 19 of 2009, in which the Advocate Commissioner was appointed to find out whether both the suit properties were one and the same. Accordingly, the Advocate Commissioner inspected the suit property and filed his report in which the Advocate Commissioner has stated that subject matter of suit in O.S.No. 159 of 2007 and 161 of 2006 are one and the same. However, the description of the property stated as T.S.No.817 instead of T.S.No.818 of 2007 in O.S.No.159 of 2007 and hence, the respondent herein was constrained to file an application in I.A.No.223 of 2023 in O.S.No.159 of 2007 for amending the survey numbers in the suit schedule property in



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O.S.No.159 of 2007 and the same was resisted by the revision petitioners herein stating that based on the settlement deed, dated 16.10.1961 survey number was mentioned as T.S.No.817, however, the respondent has filed the said suit in the year 2007 after 16 years, he has come forward with an application to amend the plaint in O.S.No.159 of 2007 and the same cannot be permitted. It is further submitted that based on the report of the Advocate Commissioner, Survey Number in the suit in O.S.No.159 of 2007 cannot be permitted to be amended. Hence, the application is liable to be dismissed. However, the trial Court considering the facts and circumstances of the case and the averments made in the petition and the counter affidavit filed allowed the said amendment application. Challenging the same, the revision petitioner herein has preferred the present Civil Revision Petition.

3. The learned counsel appearing for the revision petitioners would submit that if the said application is allowed it would be against the provisio under Order 6 Rule 17 CPC and nothing is averred in the petition in spite of the due diligent, the said application could not have been filed before the trial Court. In support of his contention he has relied on the Judgment of the Hon'ble Supreme Court reported in **2021 (2) MWN (civil)**



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102 in the case of (Pandit Malhari Mahale Vs. Monika Pandit Mahale and others).

4. On the other hand, the learned counsel appearing for the respondent / plaintiff would submit that the said amendment would assist the Court for resolving the controversy between the parties and apart from that, the Character of the suit will not be changed. In support of his contention, he has relied on the Judgment of the Hon'ble Supreme Court, ***dated 21.06.2007*** made in ***2007 (0) Supreme (Mad) 1849*** in the case of ***M.Muthumanickam and others Vs. B.Senthilvel.***

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The point for consideration is that whether by amending the survey number of the suit property would change the nature of the suit and by allowing the said amendment petition whether there would be any alteration in the cause of action. It is specifically pleaded in the petition that neither the boundary nor the location of the suit property has been changed by the said amendment, only Survey Number is wrongly



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mentioned in the above suit and moreover, the petitioners came to know about the correct Survey number only after filing of the report by the Advocate Commissioner and hence, the present amendment would not alter the cause of action or change the nature of the suit. Hence, I do not find any infirmity or perversity in the order passed by the trial Court.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

13.11.2024

Index : Yes / No
Internet : Yes/ No
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To

The Principal District Munsif Court, Thanjavur,



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trp

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