



C.R.P.(MD).No.2169 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.04.2024

DELIVERED ON: 17.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.2169 of 2018

and

CMP(MD).No.9644 of 2018

D.Prasannam

...Petitioner

Vs

1.Gomathi

2.Kodiyarasu (died)

...Respondent

(Memo dated 08.01.2024 is recorded as R2 died and R1 who is already on record, is recorded as legal heir of the deceased R2 vide Court order dated 23.01.2024)

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair order and decreetal order dated 09.08.2018 passed in I.A.No.1067 of 2017 in O.S.No.676 of 2011 on the file of the III Additional District Munsif Court, Tiruchirappalli by allowing this revision petition.



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For Petitioner : Mr.S.Vinayak
For R1 : Mr.P.Vinoth
for Mr.R.Subramanian
R2 : Died

ORDER

The plaintiff in O.S.No.676 of 2011 on the file of the III District Munsif Court, Trichy is the revision petitioner.

2.The plaintiff had filed a suit for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule properties. The suit was filed relating to Old T.S.No.1066/1 and New T.S.No.2.

3.The defendants had filed a written statement contending that New T.S.No.4 belongs to them whereas the plaintiff had filed the present suit for New T.S.No.2. By obtaining blanket interim order with regard to T.S.No.2, the plaintiff is attempting to encroach and occupy T.S.No.4.

4.Pending suit, an Advocate Commissioner was appointed. After the examination of PW1, the plaintiff herein had filed I.A.No.1067 of 2017 to amend the plaint with regard to survey number. As per the amendment,



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the plaintiff wanted to introduce old Survey No.1065 corresponding to New T.S.No.4 instead of Old Survey No. 1066/1 corresponding to T.S.No.2.

5.The defendants had opposed the said amendment application stating that such an application has been filed much belatedly and that too after commencement of the trial. Though such a plea has been raised by the defendants in the written statement filed in 2011, the plaintiffs have waited for nearly 6 years to file such an amendment.

6.The defendants have further contended that only after filing of the amendment application, the plaintiff has approached his vendor to get a rectification deed. Therefore, they prayed for dismissal of the amendment application.

7.The trial Court after considering the submissions made on either side, had arrived at a finding that the application has been filed belatedly and the rectification deed has been entered into after filing of the amendment application. Challenging the same, the present revision petition has been filed.

8.According to the learned counsel appearing for the revision petitioner, an error has crept in the sale deed in favour of his wife and the



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same error has been carried in the settlement deed executed by his wife.

The plaintiff is not altering the extent or the boundaries, but he is only changing the survey numbers. It does not change the cause of action and no prejudice would be caused to the defendants because of the said amendment. The plaintiff came to know about the mistake only when he was cross examined by the defendants. Hence, there was no delay in filing the application and the trial Court ought to have allowed the said application.

9.Per contra, the learned counsel appearing for the respondents had contended that the plaintiff was not vigilant enough in filing an application for amendment of the survey number and there was a huge delay of six years despite the same being pointed out in the written statement. Hence, he prayed for dismissal of the revision petition.

10.I have carefully considered the submissions made on either side and perused the materials records.

11.The description of the property in the plaint discloses that the suit has been filed for Old T.S.No.1066/1 and New T.S.No.2. In paragraph No.6 of the written statement filed on 14.11.2011, the defendants have specifically pointed out that they are claiming right over T.S.No.4 whereas



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the plaintiff is claiming right only in T.S.No.2. Therefore, the averments in the amendment application that only during the cross examination, the plaintiff came to know that the suit property does not lie in T.S.No.2, but it lies in T.S.No.4 cannot be accepted.

12.The plaintiff had further contended that only after the cross examination, he met his wife's vendor to find out the correct survey number. Therefore, it is clear that there was no due diligence on the part of the plaintiff in verifying the survey number for which he is claiming a decree for permanent injunction. Six years after the filing of the written statement, the plaintiff has chosen to file the present application for amendment. The plaintiff had filed the amendment application on 15.11.2017. But he has entered into a rectification deed with her wife's vendor on 28.02.2018. Therefore, it is clear that only after filing of the amendment application, the plaintiff had created the rectification deed for the purpose of amending the survey numbers. Therefore, there is no due diligence on the part of the defendants.

13.The cross examination of the plaintiff was completed on 06.10.2017 and only on 15.11.2017, the present amendment application has been filed. Therefore, it is a post-trial amendment and as pointed out



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supra, the plaintiff was not vigilant enough in identifying the survey number of the suit schedule property. Had he exercised due diligence, he could have very well found out the correct survey number. In view of the proviso to Order 6 Rule 17 of C.P.C., the trial Court was right in dismissing the amendment application. This Court does not find any illegality or infirmity in the order passed by the trial Court. There are no merits in the petition.

14. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2024

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

1. The III Additional District Munsif,
Tiruchirappalli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
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