



C.R.P.(MD)No.2498 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2498 of 2022
and
C.M.P.(MD)No.12254 of 2022

1.Thangavelu

2.Sakthivelu

3.Karuppaiah

... Petitioners / Petitioners / Plaintiffs

Vs.

1.Palaniappan

2.Muthaiah

... Respondents / Respondents / Dendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal passed in new I.A.No.3 of 2022, Old I.A.No.320 of 2021 in O.S.No.8 of 2020 on the file of the District Munsif Court, Keeranur dated 06.09.2022 by allowing this civil revision petition.

For Petitioners : Mr.S.Krishnan

For Respondents : Mr.K.P.Narayanakumar



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ORDER

Heard both sides.

2. The plaintiffs in O.S.No.8 of 2020 on the file of the District Munsif Court, Keeranur are the revision petitioners herein. The defendants have also raised counter claim. The plaintiffs filed I.A.No.3 of 2022 under Order 6 Rule 17 of C.P.C for amending the suit schedule and add few paragraphs in the plaint. IA was dismissed. Questioning the same, this civil revision petition came to be filed.

3. The learned counsel for the plaintiffs submitted that the impugned order deserves to be set aside and called upon this Court to allow the civil revision petition as prayed for.

4. The learned counsel for the defendants submitted that the impugned order is well reasoned. He would point out that if the amendment is allowed, it would take away one of his prime defences and that the suit property itself is imaginary and not available on ground. He submitted that allowing the amendment would run counter to the settled principles. He called upon this Court to dismiss the civil revision petition.



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5. I carefully considered the rival contentions and went through the materials on record.

6. Amendments are two fold, pre trial and post trial. In the case of pre trial amendment, the courts should be liberal in their approach. Of-course, they should be made in order to determine the real question in controversy. Post trial amendment will be put on a different pedestal altogether. The case on hand falls in the category of pre trial amendment. In this case, the suit is for permanent injunction. An advocate commissioner was appointed. From the report submitted by the advocate commissioner, the plaintiffs realized that survey number originally given by them was erroneous and that the extent is also incorrect. Therefore, appropriate changes were sought to be made.

7. I fail to understand as to why this amendment was rejected by the court below. When the report of the advocate commissioner reveals error in the description and extent of the property, the plaintiffs ought to be allowed to make appropriate amendments. The four boundaries have not been changed. The controversy between the parties is very much remaining the same. If the amendment is not allowed, it would definitely lead to injustice.



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8. In this view of the matter, the impugned order is set aside. The defendants of-course are at liberty to file additional written statement. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.09.2024

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

The District Munsif Court, Keeranur.



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G.R.SWAMINATHAN, J.

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