



C.R.P(MD)No.3027 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.3027 of 2023

and

C.M.P(MD)No. 15587 of 2023

Kamurunisha

... Petitioner

Vs

1.Arumugam

2.The Tahsildar,
Having office at,
Manachanallur-621 005,
Trichy District.

3.The Revenue Divisional Officer,
Having Office at,
Lalgudi-621 005,
Trichy District.

4.The District Collector,
Having office at,
Collector's office,
Trichirappalli - 621 001.

... Respondents



C.R.P(MD)No.3027 of 2023

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the fair and decreetal order dated 26.09.2023 made in I.A.No.5 of 2023 in O.S.No.12 of 2012 on the file of Additional District Munsif Court, Lalgudi.

For Petitioner	: Mr.A.Arumugam for M/s.Ajmal Associates
For R1	: No appearance
For R2	: Mr.J.Ashok

ORDER

This Civil Revision Petition is filed to allow the Civil Revision Petition and set aside the fair and decreetal order dated 26.09.2023 made in I.A.No.5 of 2023 in O.S.No.12 of 2012 on the file of Additional District Munsif Court, Lalgudi.

2. A suit in O.S.No.12 of 2012 was filed by the revision petitioner namely Kamarunisha for the relief of permanent injunction and for costs. In the plaint, it is stated that the property was purchased by her for a



C.R.P(MD)No.3027 of 2023

valuable consideration on 15.10.1997 from one Mariyayee. Originally the property belongs to the mother of Mariyayee namely Valliyammai. During the Natham survey, settlement patta was issued to Valliyammai, since she was in possession. After her demise, Mariyayee succeeded to her estate and inherited the property. From the date of purchase, she was in possession and enjoyment. Patta was also transferred in her name. Now it has been comprised in new survey No.257/6. The first defendant is a stranger has given a petition to cancel the patta standing in her name. She filed the suit seeking permanent injunction. Pending the trial process, I.A.No.5 of 2023, was taken out by this petitioner, seeking amendment of the plaint on the ground that since the first defendant stating that the sale deed in favour of the plaintiff is not valid in law, necessarily declaration relief must be sought for.

3. That was resisted by the first defendant stating that only to drag on the proceedings, amendment petition is filed. On the side of the plaintiff three witnesses were examined. At the time of letting the defendant side evidence, this petition is filed. After considering the rival submissions, the trial Court dismissed the petition stating that, no proper



C.R.P(MD)No.3027 of 2023

reason was assigned by the petitioner for the delay and it is not satisfied the requirement of law as per Order 6 Rule 17 C.P.C. Since, no proper and valid reason is stated, the plaint is not amendable. Against which this Civil Revision Petition has been preferred.

4. Learned counsel for the petitioner would submit that delay was properly explained and there was no willful default on her part. Some amendment is required only for resolving the issue between the parties. No prejudice would be caused to the respondent. According to him, the order passed by the trial Court requires interference.

5. Per contra, learned counsel for the respondent would submit that absolutely no proper explanation was offered by the petitioner for the delay, since trial already commenced. The amendment application was rightly rejected by the trial Court.

6. Learned counsel for the revision petitioner also filed an undertaking affidavit that if the amendment application is allowed, he is not going to lead further evidence on his side since sufficient evidence was already let in on the question of title also.



C.R.P(MD)No.3027 of 2023

7. So the question which arises for consideration is whether in the light of the undertaking affidavit filed by the revision petitioner, the petition can be allowed. Order VI Rule 17 of CPC reads as under:

"17.Amendment of Pleadings -

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

8. From the reading of Order 6 Rule 17 of CPC, it emerges the following points:

i) the amendment is permissible, if it will be useful for the purpose of deciding the real issue between the parties.

ii) It is clear on record that amendment is required for deciding the title issue, according to the petitioner, she purchased the property from



C.R.P(MD)No.3027 of 2023

one Valliyammai. But the first defendant states that he is the only legal heir of deceased Valliyammai. Valliyammai had a daughter by name Mariyayee. Naturally who is the legal heir of the original owner Valliyammai is a matter for consideration by the trial Court, for which the relief of declaration sought for by the petitioner, is required.

9. But the second ingredient is that the petitioner must satisfy the Court before the commencement of the trial, he could not file the petition inspite of due diligence. Here comes, the problem for the revision petitioner. The trial Court has dismissed the petition on this ground. Now it can be seen whether proper reason has been mentioned in the petition. Paragraph No.3 runs as under :

"3.Since the 1st defendant, who has no locus to the suit property has disputed my title and possession as well as my vendor to suit property, I am forced to amend the prayer for declaration of title to the suit property also or else I will be put to irreparable loss and hardship. By amending such relief, the character and scope of the suit does not change. I am willing to pay necessary Court fee for the relief sought for."



C.R.P(MD)No.3027 of 2023

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10. It is seen that no proper reason was assigned. But however, in the light of the undertaking affidavit filed by the petitioner, for deciding the issue over the title of the property finally, between the contesting parties, I am of the considered view that amendment can be allowed.

11. In the result, this Civil Revision Petition is allowed. The order passed by the learned Additional District Munsif Court, Lalgudi, is set aside. The petition filed by the revision petitioner in I.A.No.5 of 2023 stands allowed and further process may be taken and in view of the oldness of the matter, there shall be a direction to the Additional District Munsif Court, Lalgudi, to complete the trial within a period of three months from the date of receipt of a copy of this order. In the light of the affidavit filed by the petitioner, if the defendant wants to cross examine the witnesses further, after amendment, it must be permitted. But the plaintiff should not be permitted to lead any additional evidence or documents.



C.R.P(MD)No.3027 of 2023

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12. With the above observation, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition stands closed.

14.02.2024

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

- 1.The Additional District Munsif, Lalgudi.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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C.R.P(MD)No.3027 of 2023

G.ILANGOVAN, J.

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ORDER
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