



C.R.P.No.1323 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1323 of 2022

R.Radhakrishnan

.. Petitioner

Versus

R.Babu

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 12.01.2022 passed in I.A.No.129 of 2021 in O.S.No.123 of 2016 pending on the file of the learned Principal District Munsif, Cuddalore.

For Petitioner : Mr.T.S.Baskaran

For Respondent : Mr.Rooban Chakravarthy

ORDER

Heard Mr.T.S.Baskaran for the petitioner and Mr.Rooban Chakravarthy for the respondent.

2. The civil revision petitioner challenges the order of the learned Principal District Munsif at Cuddalore in I.A.No.129 of 2021 in O.S.No.123 of 2016 dated 12.01.2022.



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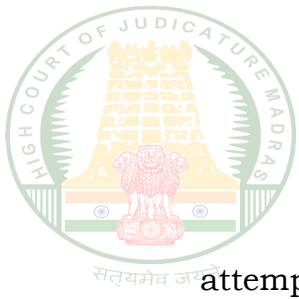
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3. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

4. The plaintiff is the civil revision petitioner. He presented O.S.No.123 of 2016 seeking declaration of his title to the B schedule mentioned property and for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the same.

5. The case, according to the plaint, is that the plaintiff's father, one Ramasamy Reddiar, purchased the A schedule mentioned property by way of two registered sale deeds dated 22.06.1949 and 09.11.1957. The said Ramasammy Reddiar was in peaceful possession and enjoyment of the same, till he passed away on 10.01.1966. On the death of Ramasamy Reddiar, the plaintiff succeeded to the property as his sole legal heir.

6. The cause of action for the suit is that the defendant, who is the neighbour of the plaintiff, attempted to encroach upon the B schedule mentioned property, which is a smaller extent of the A schedule mentioned property. The plaintiff pleaded that the defendant is



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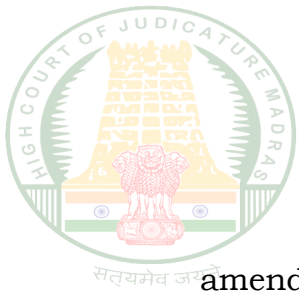
attempting to take forceable possession on that portion and hence, he came forward with the suit.

7. The summons were duly served on the defendant and the defendant also filed a detailed written statement.

8. The defendant, in his written statement, stated that he had purchased the property adjacent to the plaintiff's property in the year 2011. He pleaded that the suit lacks the cause of action because the defendant had never attempted to encroach upon the property. Hence, he sought for dismissal of the suit.

9. The parties went for trial, on the basis of these pleadings. The trial was completed and the suit was posted for arguments.

10. At that stage, the plaintiff filed an application under Order VI Rule 17 of the Code of Civil Procedure seeking to amend the plaint. The plaintiff described the plaint portion as item Nos.1 to 7, and pointed out the portions marked as 1, 2, 3 and 7 were purchased in the year 1949, and items marked as 4 to 6 were purchased in the year 1957. He also sought to include the details as regards the vendors and purchasers in the sale deeds. He further added that since there is a difference in measurement of the property, he has come forth with the details by



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amending the schedule. He added a line stating that the defendant, without knowing the actual East-West measurement of the plaintiff's property and assuming that the East-West extent is a straight line, is attempting to trespass into the B schedule property. Furthermore, the plaintiff in the amendment application gave the details of the A and B schedule property and described them in terms of a rough plan produced along with the plaint.

11. The learned Trial Judge received this application as I.A.No.129 of 2021 and directed the defendant to file a counter.

12. A counter was presented stating that there is no need to amend the plaint and it was an attempt by the plaintiff to introduce a new cause of action. He pointed out further that if the amendment is carried out, the relief in the plaint must be changed into one for recovery of possession and such a relief cannot be granted. He further urged that it is unbelievable that the plaintiff came to know about the mistakes in the schedule only at the time of preparation of the arguments, and the schedule of the property has cunningly been drafted to suit the plaintiff's convenience. Hence, he sought for dismissal of the application.

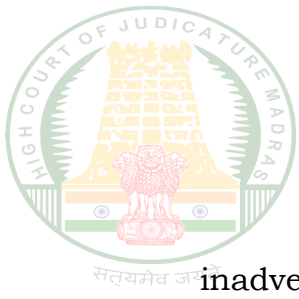


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13. The learned Trial Judge took up the application and came to a conclusion that the application had been filed belatedly, after the trial has been concluded and that, there is a change in cause of action. She further pointed out that in case the amendment application is allowed, one more round of tedious litigation would have to be faced by the parties. Consequently, in order to avoid multiplicity of suits and tiresome litigation process, the application came to be dismissed. Aggrieved by the same, the present revision.

14. A perusal of the papers shows that the plaintiff had filed an application for appointment of an Advocate Commissioner to note down the physical features of the property. This application came to be dismissed on the ground that there is no dispute in the identity of the property and it is for the plaintiff to prove his case on the basis of his documents. Subsequently, after evidence was over and after granting sufficient time to the plaintiff to place his arguments, the learned Trial Judge closed the opportunity to submit arguments. Hence, the plaintiff filed an application to re-open the case for hearing his arguments. He also filed an application in I.A.No.267 of 2019 seeking to withdraw the suit and file a fresh suit on the same cause of action. The plea in that application was that the description of the property was erroneous and lacks proper particulars. He pointed out that this was due to



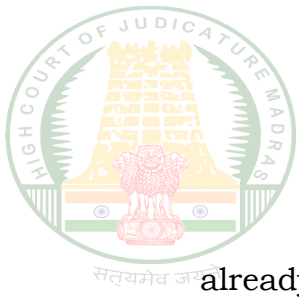
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inadvertence and that it was a mistake committed by erstwhile counsel and therefore, sought for the aforesaid relief.

15. The defendant opposed this application stating that there is no necessity to withdraw the suit and file a fresh suit for the same cause of action.

16. The learned Principal District Munsif by an order dated 01.12.2020 agreed with the defendant and dismissed the application with liberty to the plaintiff to file an amendment application for amending the plaint. This order was passed on 01.12.2020. Invoking the liberty granted by the Court in I.A.No.267 of 2019, the plaintiff came forth with the present application for amendment. The learned Principal District Munsif, who had granted liberty to file the amendment application, dismissed the said application on the aforesaid grounds.

17. It is the plea of Mr.T.S.Baskaran that the amendment does not change the cause of action but it is merely clarificatory in nature. He took me to the amendment application and pointed out, all that the plaintiff is attempting to do is to expand on the vendors and purchasers of the property of the sale deeds of the years, 1949 and 1957 and the schedule of the property is being brought in line with the sale deeds



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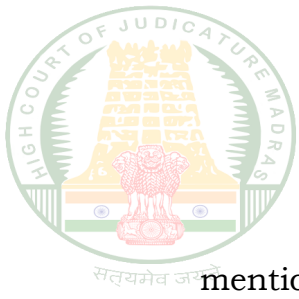
already filed before the court. Furthermore, Mr.T.S.Baskaran states that his client is not going to let in any fresh evidence on the basis of the amendment application, if the amendment application is allowed.

18. Mr.Rooban Chakravarthy states that due diligence has not been shown by the plaintiff, while moving the application. The suit has proceeded to the stage of arguments and hence, it attracts the proviso to Order VI Rule 17 of the Code of Civil Procedure. In addition, he states that the learned Principal District Munsif is right in concluding that if the amendment is allowed, there will be a new cause of action.

19. I have carefully considered the submissions of both sides and have gone through the records.

20. Since an objection on proviso to Order VI Rule 17 has been raised, I will have to deal with that point first, before I proceed with further.

21. The case of the plaintiff is a very simple one. He pleads that his father has purchased the schedule mentioned property in the years 1949 and 1957, and he had succeeded to the said property. According to him, the defendant, without any right, title, and interest over the B schedule



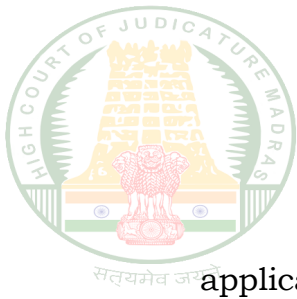
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mentioned property, has attempted to encroach upon the same. He has filed sale deeds dated 22.06.1949 and 09.11.1957, even at the time of presentation of the plaint.

22. The purpose of proviso to Order VI Rule 17 is to prevent the plaintiff from indulging in any vexatious litigation by filing one application after another and also to prevent the plaintiff from taking the defendant by surprise by seeking for an amendment, which will remove the substratum of the suit or calling upon the defendant to defend an entirely new pleading.

23. A reading of the amendment application shows that even post the amendment, the suit continues to be one for declaration and for injunction.

24. I have to agree with Mr.Rooban Chakravarthy that the plaintiff could have moved this application earlier. However, on legal advice, the plaintiff filed an application to withdraw the suit and file a fresh suit on the same cause of action. The learned Trial Judge, while dealing with that application, granted liberty to the plaintiff to seek for amendment and continue with the same proceedings. The liberty having been granted, the plaintiff took advantage of the same and moved the said



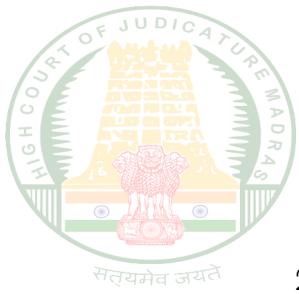
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application. Therefore, one cannot blame the plaintiff for not having taken efforts to correct the plaint in time.

25. The amendment application, though filed and taken on file in the year 2021, the plaintiff had already disclosed the necessity for the amendment in the year 2019 itself. Therefore, I cannot conclude that there is no due diligence on part of the plaintiff.

26. A litigant in this part of the country engages and instructs a lawyer expecting that the plaint will be drafted according to his instructions. In case there is a mistake, the courts are not powerless to carryout the amendment.

27. Insofar as the plea that a new cause of action is attempted to be brought in is concerned, I have gone through the plaint as well as the amendment. The cause of action, which the plaintiff alleges as pointed out above, is an attempt made by the defendant to encroach upon his property. He has only described the schedule by way of an amendment. He has not pleaded any new cause of action but continues with the same cause of action, with which he approached the Court in the year 2016.



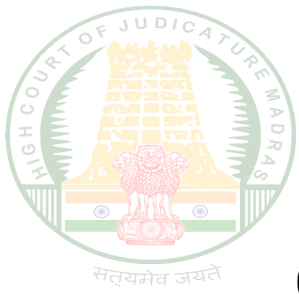
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28. Furthermore, in terms of Order VI Rule 9 of the Code of Civil Procedure, the plaintiff need not plead about the contents of the document in full, while presenting the plaint. The plaintiff has pleaded about the two purchases made by his father in the years 1949 and 1957. In the amendment application, he merely seeks to clarify this position. The documents are already before this court, as pointed out above, as plaint documents 1 and 2. Being a clarificatory amendment, I am of the view that the learned Principal District Munsif erred in dismissing the application. The statement of Mr.T.S.Baskaran that the plaintiff will not let in any fresh evidence is recorded. The learned District Munsif is requested to receive an additional written statement from the defendant and thereafter proceed in accordance with law.

29. At this stage, I have to take note of the submission by the Mr.Rooban Chakravarthy. He points out that there has been an undue delay in moving the application. When the amendment application is filed to clarify the position, delay need not stand in the way of the court to allow the application. The learned Trial Judge always had the discretion to allow the application on payment of costs. Accordingly, the **Civil Revision Petition is allowed** with following terms:

(i) I.A.No.129 of 2021 in O.S.No.123 of 2016 dated 12.01.2022 is set aside;



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(ii) the plaintiff is granted leave to amend the plaint in terms of the amendment application, on the condition that the plaintiff pays the defendant a sum of Rs.7,500/- within a period of four weeks from the date of receipt of a copy of this order;

(iii) in case, the cost of Rs.7,500/- is not paid within the time stipulated by this court, the leave granted in this order shall stand forfeited without any further notice of this Court;

(iv) if condition (ii) is complied with, the plaintiff shall file an amended plaint within a period of two weeks from the date of compliance of the condition;

(v) the defendant is granted two weeks' time to file an additional written statement, which obviously will be confined to the amendment granted;

(vii) being a suit of the year 2016, the learned Principal District Munsif is requested to dispose of the suit on or before 31.10.2025;

(viii) the learned Principal District Munsif shall strictly adhere to the timelines granted in this order;

(ix) A report shall be submitted to this court together with a copy of the judgment in the suit on or before 31.10.2025.

Call the matter for reporting compliance on 03.11.2025.



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25.07.2025

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

1.The Principal District Munsif, Cuddalore.



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V.LAKSHMINARAYANAN, J.

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