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C.R.P.[NPD].No.1297 of 2023
and C.M.P.No.8717 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.1297 of 2023
and C.M.P.No.8717 of 2023

1.V.Bhuvaneshwari
2.M.Venkataramana.

.. Petitioners

Vs.

L.Umashankar

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order made in I.A.No.2 of 2019 in O.S.No.2189 of 2019 dated 10.01.2013 on the file of the XXI Additional Judge, City Civil Court, Chennai at Allikulam.

For Petitioners : Mr.V.Raghavachari
Senior Counsel
for Mrs.V.Srimathi
For Respondent : Mr.M.Venkatesh

ORDER

The challenge has been made to the order of the trial Court allowing the application filed under Order 6 Rule 17 CPC, to amend the plaint.



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2.The suit has been filed by the respondent/plaintiff in respect of Plot No.17/A forming part of the revised lay-out for RLA 125-64 dated 14th June, 1967 in T.S.No.17 Block No.26 formerly R.S.No.108-1A and R.S.No.107-1 Urur Village in the Registration Sub-District of Saidapet and Registration District of South Madras of an extent of 1260 sq.ft. Bounded on the North by Plot No.16, East by 30 ft Road, West by Damodarapuram and South by Plot No.17.

3.It is the case of the respondent/plaintiff that he is in possession of the property. Since the petitioners/defendants interfere with the possession of the respondent in the schedule mentioned property, permanent injunction was sought in O.S.No.2189 of 2019. Thereafter, within a week after filing a suit, an amendment application has been filed to amend the schedule of property as follows:-

“Land and Building situated at Plot No.17 & 17A, Old Door No.5A, New Door No.13, Beach Home Avenue 3rd Street, Besant Nagar, Chennai – 600 090, Block No.26, Comprised in T.S.No.17, property R.S.No.108/1A, 107/1, Measures about 2520 sq.ft of land and building about 2390 sq.ft in



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ground and first floors and bounded on

“North by : Plot No.16;

South by : Plot No.17 part;

East by : 30 Feet Road (Beach Home Avenue 3rd Street) & Part
of Plot No.17;

West by : Damodarapuram situated within the Registration
District of South Chennai and Sub Registration Office at Adyar.”

4. According to the respondent/plaintiff, he purchased the property by two different sale deeds and the omission in the original schedule is purely inadvertent. Therefore, he sought to amend the schedule. The said amendment application has been opposed by the petitioners/defendants that plot No.17A is a part of a 30 feet road and the petitioners have encroached that area and therefore, the amendment cannot be made. Further, the respondent has already filed the suit in O.S.No.6676 of 2014, seeking for declaration and permanent injunction in respect of the same property. The declaration and consequential injunction has been negated by the trial Court. Now, the 2nd suit filed for permanent injunction in respect of the same subject property is not maintainable.



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5.Mr.V.Ragavachari, learned Senior Counsel appearing for the petitioners vehemently submitted that as the very declaration of the subject property is negated by the trial Court, subsequent suit for permanent injunction is not maintainable. Further, having filed the suit for the permanent injunction for particular portion of the property and now the petitioner wants to include other area in the suit, which in fact change the cause of action and nature of the suit. Hence, he assailed the order of the trial Court. In support of his submission, he relied upon the judgment in the case of *Thangaraja Padayachi and another vs. Natesa Padayachi and another* reported in (1995) 2 CTC 196 and *Bhagavatula Gopalakrishnamurthi and others vs. Dhulipalla Sreedhara Rao and another* reported in (1949) 2 Mad LJ (NRC 1) 21.

6.Learned counsel appearing for the respondent would submit that the omission in the original schedule is purely inadvertent and the amendment is sought based on two registered sale deeds in favour of the respondent. Considering that plea of the respondent, the trial Court rightly considered the amendment will not no way change the character of the suit.



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7.Heard Mr.V.Ragavachari, learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the materials available on records.

8.Though much emphasis was laid against the earlier suit and title deed, at this stage those issues cannot be agitated. Now the points to be considered is whether the amendment will change the character of the suit. The suit has been filed for bare injunction. According to the respondent/plaintiff, he is in possession of the schedule mentioned property and by way of amendment, plaintiff wants to add plot No. 17 along with 17A in the schedule mentioned property, it is to be noted that the boundaries for both the extent was one and the same. The amendment application also filed within a week after the filing of the suit. Therefore, this Court is of the view that since this is only a suit for bare injunction with specific boundaries mere amendment of schedule of property will not change the character of the suit. It is for the respondent/plaintiff to establish the possession over the schedule of property and it is well open to the revision petitioners to raise their contention with regard to the provision of law in the



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pending suit. As long as there is no change in the character of the suit, the order of the trial Court does not require any interference. The trial Court shall immediately permit to carry out the amendment and the parties shall file their written statement within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the trial Court shall dispose of the case within a period of four months from the date of receipt of a copy of this order.

9.In the result, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

27.01.2025

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Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The XXI Additional Judge,
City Civil Court, Chennai at Allikulam.

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N.SATHISH KUMAR, J.

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