



C.R.P.(PD)(MD).No.150 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD).No.150 of 2025

and CMP(MD).No.1014 of 2025

Daya Madhavan

... Petitioner

-VS-

1.Mathu

2.Sumi

...Respondents

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the order dated 07.12.2024 in I.A.No.7 of 2024 in O.S.No.99 of 2021 on the file of the Subordinate Judge, Eraniel and allow the civil revision petition.

For Petitioner : Mr.V.M.Balamohan Thambi

For Respondents : Mr.S.Jayakumar

ORDER

The plaintiff in O.S.No.99 of 2021 on the file of the Subordinate Court, Eraniel is the revision petitioner.

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2.The revision petitioner as plaintiff has filed the above said suit for the relief of declaration of his title and for a decree for demarcation of boundaries on the western side. A perusal of the schedule of property reveals that the plaintiff had filed the suit for R.S.No.271/26 having an extent of 5.659 extent. Pending suit, the plaintiff had filed an application for appointment of advocate commissioner in I.A.No.2 of 2024.

3.From the commissioner's report, the plaintiff found that the correct resurvey number of his property is 271/5 and not 271/26. Therefore, the plaintiff had filed I.A.No.7 of 2024 under Order 6 Rule-17 of C.P.C. to amend the survey number in the suit schedule by substituting R.S.No.271/5 in the place of R.S.No.271/26.The said application was dismissed by the trial Court on the ground that the alteration or amendment of resurvey number would change the nature and character of the suit and may cause prejudice to the defendants. This order is put to challenge in the present civil revision petition.

4.According to the learned counsel for the revision petitioner, S.N.271/26 having an extent of 5 cents belongs to the defendants. On the other hand S.No.271/5 belongs to the plaintiff. However, erroneously



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wrong survey number was mentioned in the plaint schedule. After commissioner's report, he had identified the mistake and he is attempting to rectify the said mistake. An alteration or amendment of the survey number in the schedule of property would not alter cause of action or cause any prejudice to the defendants. He had further contended that in fact the plaintiff admits the title and possession of the defendants to an extent of 5 cents in S.No.271/26. In such circumstances, the defendants cannot be prejudiced by amendment of the survey number in the schedule of property.

5.Per contra, the learned counsel for the respondents/defendants had contended that there are erroneous observation in the commissioner's report which cannot give a cause of action to the plaintiff. He had further submits that the defendants have filed objection to the commissioner's report. Therefore, in such circumstances, the commissioner's report cannot be a basis for amending the survey number in the suit schedule property.

6.I have considered the submissions made on either side and perused the material records.



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7.From the facts captured above, it is clear that the petitioner had filed the said suit mentioning the suit schedule property as R.S.No.271/26 but now he is amending the same as R.S.No.271/5. Now the plaintiff admits that R.S.No.271/26 is the property of the defendants and the plaintiff is claiming title and possession only over R.S.No.271/5.

8.The learned counsel for the respondents/defendants had filed a counter in the above revision petition. Paragraph No.10 of the counter is extracted as follows:

“10.I state that against the order the plaintiff filed the present revision petition. My property is in Survey No.271/26 and not in Survey No.271/5. It is just and necessary to set aside the commission report in respect of our property in Survey No.271/26 (area of 5 cents) and the plaintiff has to withdraw the suit against the 1st respondent and me. We have no objection that the petitioner's right in Survey No.271/5 if the suit against me and the 1st respondent is withdrawn.”

9.The submissions made on either side will clearly indicate that the parties are clear about their respective survey numbers. Therefore, what remains in the suit is whether the plaintiff would be entitled for demarcation of his western boundary or not. The said issue may be decided by the trial Court after considering the submissions made on either side.



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10.Considering the fact that the survey number alone is being amended without amending the extent or boundaries of the property, no prejudice would be caused to the defendants and it would not alter the cause of action of the plaintiff. In such circumstances, the order passed by the trial Court in I.A.No.7 of 2024 is hereby set aside and this Civil Revision Petition stands allowed with the above said observations. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

- 1.The Subordinate Judge, Eraniel
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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