



C.R.P.(PD)(MD).Nos.690 & 712 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD).Nos.690 & 712 of 2023
and CMP(MD).Nos.3200, 3277, 3326 & 3327 of 2023

1.A.Karuppiah

2.Mangaleshwari

3.Vasantha Kumari

Muruganantham (died)

4.Valli

5.Ponni

... Petitioners/Respondents/Defendants
in both revisions

-VS-

A.Kumaraguru

...Respondent/Petitioner/Plaintiff
in both revisions

COMMON PRAYER: These Civil Revision Petitions have been filed under Article 227 of Constitution of India, to set aside the common fair and decretal orders dated 25.01.2023 made in I.A.Nos.1 & 2 of 2019 in O.S.No.154 of 2015 passed by the III Additional District Court at Tiruchirappalli.



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For Petitioners : Mr.L.S.M.Mohamed Kader
In both revision petitions

For Respondent : Mr.Raghuvaran Gopalan
For M/s.P.Sujai Krishna
In both revision petitions

COMMON ORDER

These two revision petitions have been filed by the defendants in O.S.No.154 of 2015 on the file of the III Additional District Court, Tiruchirappalli.

2.The plaintiff has filed the above said suit for the relief of partition and separate possession of his 1/6th share in three items of suit schedule properties.

3.When the suit was posted for arguments, the plaintiff had filed I.A.No.1 of 2019 to reopen the case and I.A.No.2 of 2019 to amend the plaint 3rd schedule of property. These two applications were resisted by the defendants stating that the application for amendment of plaint has been filed when the suit is posted for arguments and therefore, such a belated application should not be entertained. However, the trial Court has proceeded to allow these two applications. Challenging the same, the present civil revision petitions have been filed.

4.According to the learned counsel for the revision petitioners,



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the amendment has not satisfied the proviso to Order 6 Rule 17 of C.P.C., the suit is being posted for argument. The petition now seeks to amend the door number in the plaint schedule from Door No.4 to Door No.5. This defect was pointed out in the written statement which was filed in the year 2016. Even after pointing out the defects, the plaintiff has chosen to file the present application only in 2019 that too when the suit is posted for arguments. The amendment as sought for is hit by the proviso to Order 6 Rule 17 of C.P.C. He had further contended that the question of filing an application for reopening the case would not arise, when the application is filed for amendment of plaint. Apart from this defects, another defect was pointed out with regard to second item of property. The second item is having only one storied building but erroneously mentioned as two storied building in the plaint schedule property. The learned counsel for the respondent/plaintiff has stated that two storied building means ground floor and first floor. There is no defect as pointed out in the second schedule property. The trial Court has proceeded to allow these two applications on the ground that the amendment would not alter the cause of action and it just changes the door number from 4 to 5 which was admitted by the defendants in the written statement.



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5.Heard both sides and perused the material records.

6.As far as I.A.No.1 of 2019 is concerned, the said application is a superfluous application and it is not necessary to file such an application under Order 6 Rule 17 of C.P.C.

7. As far as I.A.No.2 of 2019 is concerned, a perusal of the plaint schedule reveals that in the third item, the door number of the building is referred to as Door No.4. Now, the only amendment that is sought is to substitute Door No.5 in the place of Door No.4. In fact, this defects has already been pointed out by the defendants in their written statement filed on 29.06.2016. In fact, the plaintiff has taken his own time in filing the amendment application. There is no dispute with regard to the fact that the door number is 5 and not 4.

8.In such circumstances, this Court is of the considered opinion that the amendment is not going to alter the cause of action or the defendants would be put to any hardship by way of allowing this application. The plaintiff has taken his own time in filing this application. This Court is of the opinion that these applications should have been allowed on terms.

9.The learned counsel for the revision petitioners has relied upon



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a judgment of Patna High Court in CMA.No.246 of 2018 (Shiv Kumar Kuar and others Vs. Anil Bhagat and others) dated 15.03.2023 wherein the learned Single Judge had held that when an application for amendment of plaint does not satisfy due diligence clause contains in the proviso under Order 6 Rule 17, application for amendment has to be dismissed.

10.This Court has gone through the facts of the said case. An amendment was sought for with regard to the area and number of plots of the suit land after trial has begun. The Patna High Court has found that it is not a mere typographical error because the mistake is not only found in the schedule of property but also in the body of the plaint. In such circumstances, this Court is of the view that not being a typographical error, due diligence clause has not been satisfied. But in the present case, it is a clear case of typographical error and an inadvertent mistake. Therefore, the said judgment may not be applicable with the facts of the present case.

11.In view of the above said deliberations, this Court passes the following orders:

- a) Both the civil revision petitions stand dismissed.
- b) Since the amendment of plaint does not alter the cause of



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action, the learned counsel for the defendants submit that they may not file additional written statement.

c)The trial Court is directed to dispose of the suit on or before 30.04.2025. No costs. Consequently, connected miscellaneous petitions are closed.

24.02.2025

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

To

- 1.The III Additional District Judge,
Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR, J



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