



C.R.P.(PD)(MD)No.935 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.935 of 2022

and

C.M.P(MD)No.3722 of 2022

Rajeswari

...Petitioner/Petitioner/Plaintiff

Vs.

1.Veerappan

2.VR.Amirthaselvi

...Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the Fair and Decreetal order, dated 15.03.2022, made in I.A.No. 74 of 2022 in O.S.No.84 of 2012, on the file of the Additional Subordinate Court, Pudukottai.

For Petitioner : Mr.S.I.Muthiah

For Respondents : Mr.G.Sridharan

* * * * *

ORDER

The plaintiff in O.S.No.84 of 2012, on the file of the Additional Sub Court, Pudukottai, is the revision petitioner herein.



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2.The plaintiff had filed the above said suit for the relief of declaration of title and recovery of possession of the vacant site from the defendants.

3.A perusal of paragraph No.4 of the plaint reveals that the defendants had encroached into the suit schedule property in January 2010 and they have put up the house property. However, in the plaint schedule, there is no reference about the building. The defendants had filed a written statement on 22.09.2018, wherein, paragraph No.8, it is specifically contended that the building was put up in the year 2002.

4.The plaintiff had filed I.A.No.74 of 2022 under Order 6 Rule 17 of C.P.C. to amend the plaint schedule property, so as to incorporate the existence of the building. The said application was resisted by the defendants on the ground that such a prayer is barred by limitation and it cannot be introduced, in view of the proviso to Order 6 Rule 17 of C.P.C. The trial Court after considering the submissions made on either side had proceeded to dismiss the application on the ground that the plaintiff has not shown due diligence in filing the application under Order 6 Rule 17 of C.P.C. Challenging the same, the present revision petition has been filed.



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5. According to the learned Counsel appearing for the revision petitioner, the prayer in the plaint is only for recovery of vacant possession. In such circumstances, the introduction of the existence of the building in the plaint schedule property would not alter the cause of action or cannot cause any prejudice to the defendants. He relied upon the judgment of full Bench of the ***Madhya Pradesh High Court reported in ILR (1968) MP 472*** had contended that where the plaintiff is not claiming any right over the building, but simply seeks possession of the vacant site, after demolition of the building, such as superstructure/building need not be valued. Therefore, according to the learned Counsel appearing for the revision petitioner, the introduction of the existence of the building in the suit property, is not going to alter the value of the property.

6. The learned Counsel appearing for the revision petitioner had further contended that when the existence of the building had already been mentioned in paragraph No.4 of the plaint, introducing the same in the suit schedule property is, only to rectify inadvertent mistake and therefore, the question of invoking the proviso order 6 Rule 17 of C.P.C. would not arise. Hence, he prayed for allowing the revision petition.



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7.Per contra, the learned Counsel appearing for the respondents herein had contended that the plaintiff having knowledge about the existence of the building in the suit schedule property, had wantonly avoided to mention the same in the schedule of property to avoid the payment of additional Court fee. He further contended that evidence of P.W.1 was closed, only at that stage, the present application has been filed. Therefore, it is a post trial amendment. In such circumstances, only if the plaintiff establishes his due diligence in not filing such an application, it cannot be considered. He further pointed out that the existence of the building had also been referred to in the written statement. Hence, he prayed for sustaining the order passed by the trial Court.

8.I have considered the submissions made on either side and perused the materials available on record.

9.The present amendment application has been filed by the plaintiff to incorporate the existence of the building in the schedule of property. A perusal of the plaint indicates that in paragraph No.4, encroachment made by the defendants and the construction put up by them are being referred to. However, the plaint schedule property had not reflected the existence of the building. The existence of the building was pointed out in the written statement, which was filed on 22.09.2018. However, the present application has been filed on



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16.02.2022, when the cross examination of P.W.1 was completed. Hence, it is clear that the present amendment application is a post trial amendment. Therefore, unless the plaintiff establishes that despite due diligence, he could not file the amendment application, such an application cannot be considered.

10. In the present case, the plaintiff has pointed out that the existence of the building from the year 2010 onwards. The defendants in his written statement had pointed out that the building is in existence from 2012 onwards. In such circumstances, the plaintiff had filed a suit on 14.02.2012 and had waited for more than ten years to file his application.

11. Therefore, this Court is of the considered opinion that the plaintiff has not established the fact that despite due diligence, such an amendment application cannot be filed. The trial Court has rightly dismissed the application. There are no merits in the revision petition. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

13.02.2025

Internet: Yes/No
Index: Yes/No
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R.VIJAYAKUMAR, J.

RJR

To

The Additional Subordinate Court, Pudukottai.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

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