

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.940 of 2004

Kodiammal

.. Petitioner/Plaintiff

vs.

Sarangapani

.. Respondent/Defendant

Revision Petition filed against the order dated 31.10.2003, passed in I.A.No.156/2003 in O.S.No.80/2001, on the file of the District Munsif-cum-Judicial Magistrate Court, Nannilam.

For Petitioner : Mr.S.Sounthar
For Respondent : No Appearance

ORDER:

This Revision Petition has been filed under Art.227 of the constitution of India against the order of the District Munsif-cum-Judicial Magistrate, Nannilam, dated 31.10.2003 made in I.A.No.156/2003 in O.S.No.80/2001.

2. The plaintiff is the revision petitioner.

3. The revision petitioner filed O.S.No.80/2001 against the respondent herein praying for a judgment and decree for recovery of possession of the suit schedule property. She filed I.A.No.156/2003 under Order 6 Rule 17 to amend the measurements of the suit property on the basis of measurements given by the Advocate Commissioner's report. The trial court dismissed the Application on the ground of delay and aggrieved by the order, the above Civil Revision Petition has been filed under Article 227 of the Constitution of India.

4. Heard the learned counsel for the revision petitioner. In spite of notice having been served on the respondent, there was no representation on behalf of the respondent either in person or through counsel.

5. In the plaint itself it was specifically stated by the revision petitioner that the measurements of the property were not given exactly and the same would be amended if the report of the Advocate Commissioner reveals difference in the measurements. Therefore, the learned counsel for the petitioner is right in contending that the proposed amendment was not something new which would alter the nature and character of the suit. The trial court rejected the prayer on the ground of delay as the amendment was filed after two years from the date of the submission of the report by the Advocate Commissioner.

6. When the proposed amendment does not alter the nature and character of the suit to bring in a new cause of action, the courts ought to be liberal in granting the prayer for amendment for effective adjudication. Further, it would also avoid multiplicity of proceedings.

7. Taking into consideration the facts and circumstances of the case, it is appropriate to allow the amendment sought for in I.A.No.156/2003 on condition that the revision petitioner pays a sum of Rs.1,000/- to the respondent/defendant within a period of two weeks from the date of receipt of the copy of the order. Failing compliance, the Civil Revision Petition would stand dismissed.

8. Post the case after two weeks, i.e., on 11.8.2006 for reporting compliance.

9. With the above direction, the Civil Revision Petition is allowed. No costs. C.M.P.No.9339/2004 is closed.

28.7.2006

This petition having been posted for further orders on eleventh day of August 2006 subsequent to the order of this Court dated 28.7.2006 and made herein and in the presence of Mr. S. Sounthar, Advocate for the petitioner and of Mr. S. Govindarajan, Advocate for the Respondent, the Court made the following order:-

Subsequent to the directions of this Court in the final order on 28.07.2006, the learned counsel for the petitioner has paid a sum of Rs.1,000/- to the respondent/defendant within the period stipulated by this Court.

2. It is evident from the memo filed by the revision petitioner that a pay order has been obtained in the name of the defendant and the same has been handed over to the learned counsel for the respondent/defendant in the trial Court and the same has been received by the learned counsel for the respondent/defendant also. Therefore, the direction of this Court has been complied with and the C.R.P.PD.No.940 of 2004 stands allowed.

11.8.2006

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

To

1.The District Munsif-cum-Judicial Magistrate,
Nannilam.

2.The Section Officer,
Judicial Section (MF Section)
High Court, Madras (For Reporting Compliance)

TEJ, NG (CO)
km/4.8.
SR/28.8.2006

C.R.P. (PD) 940/04.
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