IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT

Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif, Uthangarai

On this Saturday, the 3rd day of February 2024

I.A.No. 08 of 2023 in O.S.No. 59 of 2016

TNKI13-000551-2016

1. Kamala
2. Sangeetha …Petitioners / Plaintiffs

/versus/

1. Ponnusami (Died) ...1st Defendant
2. Perumal
3. Prabu
4. Malarkodi
5. Chennammal
6. Ranjitha
7. Ganapathi
8. Ramesh
9. Dhanam …Respondents / Defendants

This interlocutory application came up before this Court on 19.12.2023 for final hearing in the presence of advocate Thiru. K. Murugan, the learned counsel for the petitioners and advocate Thiru. S. Moorthi, the learned counsel for the respondents and upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

ORDER

The application has been filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint.

The averments of the petitioners in brief:

1. The petitioners herein are the plaintiffs in the suit and aver that the suit stands posted for plaintiff side evidence. The petitioners aver that the 'A' scheduled property

was settled in favour of the petitioner on 29.09.1992 by the grand father of the 2nd petitioner for the share entitled to the father of the petitioner and the petitioners are in possession of the 'A' scheduled property. The petitioners aver that in the settlement deed, a 1/3 share in the oil engine present at the time of the settlement was recorded and aver that in the 5th paragraph of the plaint the sale of the oil engine used in common about 10 years ago and the purchase of electric motor for irrigation out of sale proceeds have been clearly stated in the plaint. The petitioners aver that the petitioners have been irrigating the 'A' scheduled property by the water drawn using the electric motor, however, in the 'A' schedule of the suit properties, it is mentioned as 6HP oil engine and it is an inadvertent mistake caused while typing by referring to the settlement deed. The petitioners aver that there is no oil engine in the well in S.No. 47/2D1 and there is only an electric motor. The petitioners aver that the 1st defendant had executed a settlement deed dated 01.1.2004 in favour of the 2nd defendant transferring only 2/3 share in the well and 5HP electric motor with electricity connection and it is deposit sum in SC.No. 34. Subsequently, the 1st defendant also made a rectification deed altering the service number as SC.No. 145 with the same share of 2/3 and registered it as Doc.No. 4127/2016. The petitioners aver that in both of the aforesaid documents only 2/3 share, i.e. excluding the 1/3 share of the petitioners, are only been transferred to the 2nd defendant. Hence, the mentioning of oil engine in the 'A' schedule is only a typographical error caused due to inadvertence and it is necessary to amend the plaint for effective and conclusive determination of the dispute and the petitioner prays for allowing this application.

The averments of the respondents in brief:

2. The respondents admit that the suit stands posted for plaintiff's side evidence and that the petitioners instituted suit claiming on basis of the settlement deed dated 29.09.1990 and it is false to state that the petitioners have averred sale of the oil engine and purchase of electric motor out of the sale proceeds and the respondents

deny the rest of the averments as false. The respondents aver that the 1st defendant transferred 2/3 right in S.No. 47/2D1 with electric motor and electricity connection with service No. 34 by settlement deed dated 01.11.2004 registered as Doc.No. 2209/2004. The respondents aver that the rectification deed dated 02.12.2016 registered as Doc.No. 417/2016 was also executed correcting the service number as 144 from incorrect service No. 34. The respondents aver that the 1st defendant agreed to sell the 1/3 right in the well in S.No. 47/2D1 along with 5HP electric motor and its electrical service No. 145 to the 2nd defendant for valid consideration by sale deed with Doc.No. 20/B4/2016. Hence, the 2nd defendant obtained full right over the 5HP electric motor along with its electricity connection service No. 145. The respondents aver that the petitioners have no right over the electric motor and its electricity connection number and the petitioner did not also testify that the petitioners have 1/3 right over the 5HP electric motor in S.No. 47/2D1 in the proof affidavit filed for examination-in-chief and that the petitioner has admitted in her cross-examination dated 24.07.2023 that the 1st defendant has alienated 3 acres, 2/3 share in the well along with electric motor to the 2nd defendant. The respondents aver that the petitioners have, nowhere in their plaint, averred that the petitioners have 1/3 share in the electric connection with service No. 145 and the petitioners are attempting to create a new cause of action and trying to usurp the electric motor and its connection from the respondents, and hence, the respondents seek for dismissal of the application.

Point for consideration:

3. Whether this application is liable to be allowed?

Evidence:

4. Neither of the parties to this application has adduced any oral or documentary evidence.

Discussion:

5. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted for perpetual injunction restraining the respondents from obstructing the petitioners from drawing water in the common well in the 'A' scheduled property and for perpetual injunction restraining the respondents from obstructing the petitioners in using the common pathway in the 'B' scheduled property to access the 'A' scheduled property. This application has been filed by the plaintiffs seeking amendment in the plaint. The plaintiffs seek to amend the 'A' schedule of the suit properties to remove 6HP oil engine and to include 5HP electric motor with electricity connection in service No. 145 and its deposit sum. The petitioners have assigned reasons that the schedule was typed on basis of the settlement deed dated 29.09.1992 and it has been inadvertently typed as oil engine. A comparison of the schedule 'A' of the suit properties with the schedule of the settlement deed dated 29.01.1992 show that the 'A' schedule of the suit properties is nothing but an exact copy of the schedule in the settlement deed without even any attention to the expressions such as *"...எனக்கு சுயார்ஜிதமாய் பாத்தியப்பட்டு என் சுவாதீனத்திலிருந்து வரும்..."* in the suit schedule and its implication or reference in the suit. It is clear that Exhibit A1, in its schedule, shows presence of 6HP oil engine and 1/3 right and the same has been exactly copied into the 'A' schedule of the plaint. The petitioners have averred that they have mentioned about the sale of the oil engine in the averments in the plaint and also about the purchase of the electric motor. A perusal of the 5th paragraph of the plaint would show that the petitioners have mentioned about it in their plaint. For better appreciation, the relevant portion of the averments in the plaint is extracted herein under:

"...வழக்கு "அ" அட்டவணை சொத்தினை பொருத்து வாதிகளுக்கு தான பத்திரம் எழுதி பதிவு செய்து கொடுத்துள்ள 1-ம் பிரதிவாதி மேற்படி பத்திரத்தில் கிணறு ஒன்றில்

உள்ள 3/1 பங்கு பாத்தியத்தினை பொருத்தும் தான பத்திரம் எழுதிய காலத்தில் மேற்படி கிணற்றில் ஆயில் எஞ்ஞீன் இருந்ததால் ஆயில் எஞ்ஞீனில் 3/1 பங்கு பாத்தியத்தை குறிப்பிட்டும் பொது வாய்க்கால் வழி பாத்தியம் ஆகியவைகளை குறிப்பிட்டும் மாமூல் உரிமை உண்டு என குறிப்பிட்டு எழுதி பதிவு செய்து கொடுத்துள்ளார். சுமார் 10 ஆண்டுகளுக்கு முன்பு பொதுவாக இருந்த ஆயில் எஞ்ஞீன் விற்று பொது கிணற்றுக்கு மின் மோட்டார் பொருத்தப்பட்டு மின் மோட்டார் மூலம் தண்ணீர் எடுத்து விவசாயம் செய்து வருகின்றனர்...”

6. It is further contention of the petitioners that the 1st defendant executed a settlement deed and a rectification deed with respect to only 2/3 share in the electric motor. The same has been admitted by the respondents in their detailed counter as follows:

“...உண்மை சங்கதி யாதெனில் 1-ம் பிரதிவாதி 2-ம் பிரதிவாதிக்கு கடந்த 01.11.2004 தேதியில் தாவா சர்வே எண் 47/2D1 புஞ்சை எக்டர் 0.03.0 இதில் உள்ள கிணற்றில் 2/3 பங்கும். மின் மோட்டார் மின் இணைப்பு எண் 34-ல் பொதுவில் 2/3 பங்கும் தான பத்திர எண் 2209/2004 படி 1-ம் பிரதிவாதிக்கு தான பத்திரம் எழுதிக்கொடுத்தார். தான பத்திர எண் 2209/2004-ல் மின் இணைப்பு எண் 145 என்பதற்கு பதிலாக தவறுதலாக 34 என எழுதப்பட்டிருந்தது. அந்த பிழையினை திருத்தம் செய்ய 02.12.2016 தேதியில் பிழைதிருத்தல் பத்திர எண் 4127/2016 என பிழைதிருத்தல் ஆவண எண் எழுதி பதிவு செய்யப்பட்டது...”

7. However, it is further case of the respondents that the 1st defendant also sold 1/3 right in the electric motor and its connection for a sum of Rs. 13,500/- to the 2nd defendant and the 2nd defendant is entitled absolutely to the electric motor and its connection. For better appreciation, the relevant portion of the counter is extracted herein under:

“...கடந்த 21.09.2016 தேதியில் எட்டிப்பட்டி (நடுப்பட்டி) கிராம சர்வே எண் 47/2D1 புஞ்சை எக்டர் 0.03.0 தீர்வை 0.07 சென்ட்டில் உள்ள கிணறு மற்றும் 5HP மின் மோட்டார் ஒன்றின் சர்வீஸ் எண் 145 என இருநததில் 1-ம் பிரதிவாதிக்கு பாத்தியப்பட்ட 1/3 பங்கு பாத்தியத்தை ரூ. 13,500/-க்கு 2-ம் பிரதிவாதிக்கு விற்பனை செய்து கிரையத்தொகையை பெற்றுக்கொண்டு மின்மோட்டார் விக்கிரைய பத்திர எண் 20/B4/2016 என

எழுதிக்கொடுத்துள்ளார். அதன்படி 2-ம் பிரதிவாதி சர்வே எண் 47/2D1-ல் உள்ள கிணற்றில் உள்ள 5HP மின் மோட்டார் சர்வீஸ் எண் 145-ன் முழு பாத்தியமும் (தான பத்திர எண் 2209/2004 மற்றும் பிழைதிருத்தல் பத்திர எண் 4127/2016 படி 2/3 பங்கும் மின்மோட்டார் விக்கிரைய பத்திர எண் 20/B4/2016 படி 1/3 பங்கும் ஆக மொத்தம் முழு பங்கும்) 2-ம் பிரதிவாதிக்கு பாத்தியப்பட்டதாகும். மேற்சொன்ன வீதம் 2-ம் பிரதிவாதிக்கு பாத்தியப்பட்ட மின் இணைப்பு எண் 145-ல் உள்ள மின் 5HP மின் மோட்டாரில் வாதிக்கு எந்தவிதமான பாத்தியமும் உரிமையும் இல்லை. அதனால் வாதி திருத்தப்பாடு கோரி தாக்கல் செய்துள்ள மனு செலவுத்தொகையுடன் தள்ளுபடி செய்து உத்தரவிடப்பட வேண்டிய ஒன்றாகும்...”

8. It is the same stand taken by the respondents in their written statement, of which, the relevant portion is extracted herein under:

“...வாதிகள் தான பத்திர எண் 102/97-ல் கண்டுள்ளவாறு தாவா 1-ம் இன சொத்திற்கு பொது கிணற்றில் இருந்து 1/3 பங்கு தண்ணீரை ஆயில் என்ஜின் மூலம் எடுத்து செல்வதை பிரதிவாதிகள் எவ்வகையிலும் தடை செய்யவில்லை. தாவா சொத்தில் உள்ள கிணற்றில் 2-ம் பிரதிவாதி மின் மோட்டார் மூலம் தனக்கு பாத்தியப்பட்ட 2/3 பங்கு தண்ணீர் எடுத்து விவசாயம் செய்து வருகிறார். பொது கிணற்றில் 1-ம் பிரதிவாதிக்க இருந்துவந்த 1/3 பங்கு மின் மோட்டார் பாத்தியத்தை கடந்த 21.09.2016 தேதியில் கிரைய பத்திர எண் 4129/2016 படி 1-ம் பிரதிவாதி 2-ம் பிரதிவாதிக்கு கிரையம் செய்துகொடுத்துள்ளார். அதனால் பொது கிணற்றில் உள்ள மின் இணைப்பு எண் 145 பூரா பாத்தியமும் 2-ம் பிரதிவாதிக்கு மட்டுமே உள்ளது. பொது கிணற்றில் உள்ள மின் மோட்டாரில் வாதிகள் தண்ணீர் இறைக்க உரிமை கோருவதற்கு எந்தவிதமான பாத்தியமும் உரிமையும் இல்லை...”

9. Hence, it is clear from the pleadings that the dispute is with regard to the rights of the petitioners and the 2nd respondent to the electric motor and its connection. The real dispute between the parties arose when the petitioners claimed 1/3 right in the electric motor and its connection and when the 2nd respondent refused it. Hence, it is clear that the main dispute in the suit, as seen from the pleadings, is with respect to the rights of the petitioners in the electric motor and its connection. Thus, the amendment to the plaint sought by the petitioner to replace the oil engine with

electric motor with its connection shall only make the claim clearer and this Court is of considered view that the amendment would only facilitate this Court in reaching effective and conclusive determination of the real dispute between the parties. However, it is the further objection of the respondents that the 2nd petitioner has admitted to the case of the defendants in her cross-examination. A perusal of the cross-examination of the 2nd petitioner, who has been examined as PW1, shows that PW1 has admitted only as to the 2/3 share and not with respect to 1/3 share which the petitioners are claiming. The petitioner in her entire cross-examination has refuted the case of the defendants that the 2nd respondent absolutely owns the electric motor and its electricity connection. Hence, this Court is of view that the amendment does not amount to withdrawal of any admission but only elucidate the dispute more clearly. As discussed earlier, the mentioning of oil engine in the 'A' schedule of the suit properties is only a result of poor drafting of the plaint. The averments in the plaint show that the petitioners are claiming 1/3 share in the well and right to draw water by using electric motor and 1/3 right in its electricity connection and the averments in the written statement counter the same. Hence, this Court is of considered view that the amendment to the 'A' schedule of the plaint will not prejudice the respondents in anyway and that the amendment sought would not be a withdrawal of admission and the amendment is necessary for effective determination of disputes between the parties. However, this amendment is preferred only after the commencement of the trial and this only shows that the petitioners are prosecuting the suit without any due diligence and proper care. Though, no amendments should be allowed after commencement of the trial, this Court is of considered with that the amendment sought by the petitioner will only aid this Court in ascertaining the real disputes between the parties and for proper adjudication and facilitating conclusive determination of the disputes. Hence, this Court is inclined to allow this application on cost to usher due diligence.

Result:

10. ***As a result, this application is allowed on condition of payment of cost of Rs. 3,000/- by the petitioners to the respondents on or before 09.02.2024. For compliance call on 09.02.2024.***

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 3rd day of February 2024.

G AMAR ANAND
District Munsif
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District Munsif
Uthangarai

Annexure

Petitioner side evidence
Petitioner side Witnesses: Nil
Petitioner side Exhibits: Nil

Respondent side evidence
Respondent side Witnesses: Nil
Respondent side Exhibits: Nil

Court Documents: Nil

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District Munsif
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