



C.R.P.(MD) No.806 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

**C.R.P.(MD) No.806 of 2020**  
**& C.M.P.(MD) No.5472 of 2020**

Yesumariyan

... Petitioner

Vs.

1.Robert Kennady

2.Vijayadhas

3.David Rajan

4.Vijayakumar

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order passed in I.A.No.1 of 2019 in A.S.No.57 of 2014 dated 24.07.2020 on the file of the Sub Court, Kuzhithurai.

For Petitioner : Mr.S.Meenashi Sundaram  
Senior Counsel  
for Mr.M.Sengu Vijay

For R1 to R3 : Mr.H.Arumugam

For R4 : No appearance

\*\*\*\*\*



C.R.P.(MD) No.806 of 2020

**ORDER**

**WEB COPY** This Civil Revision Petition has been filed to set aside the fair and decretal order dated 24.07.2020 passed by the Sub Court, Kuzhithurai in I.A.No.1 of 2019 in A.S.No.57 of 2014.

2. By the impugned order dated 24.07.2020, the Sub Court, Kuzhithurai has dismissed I.A.No.1 of 2019 in A.S.No.57 of 2014 filed by the petitioner under Order 6 Rule 17 of Code of Civil Procedure, 1908, to amend the plaint in O.S.No.467 of 2008. The operative portion of the impugned order dated 24.07.2020 reads as under:-

9. This court has given anxious consideration to both side submissions. The petitioner has stated that the respondents have encroached the property pending this appeal on 12.12.2018 and thereby he wants to include the additional reliefs of declaration of title, recovery of possession and also for mandatory injunction. The suit in O.S.No.467/2008 was filed only for bare injunction. Now at the appeal state converting the appeal for declaration, recovery of possession would change the nature and character of the suit and for which once again a separate trial has to be conducted from the beginning. Further the respondents herein also filed a suit for declaration by denying the title of the petitioner herein and at that time itself the petitioner had opportunity to amend his prayer to declaration of title. But, without doing so, the petitioner has now at the appeal stage has filed this application which shows the petitioner has no due diligence.



WEB COPY



C.R.P.(MD) No.806 of 2020

10. Further on perusing the judgment passed by the trial court, it is seen that the trial court has held that the petitioner has encroached the suit property and he has no title over the suit property. While being so, including a prayer for declaration of title now in the Appeal stage clearly amounts to filling up the lacuna and to set right his claim over the suit property. Further the plaintiff has not submitted any documents to show that the respondents have constructed compound wall pending appeal. Moreover the petitioner in his plaint has stated that the respondents are trying to make a road in the suit property and hence he filed the suit for permanent injunction. But now the petitioner has stated that the respondents herein have constructed a compound wall and also a illegal structure in the suit property. The contentions are contrary in nature.

11. In the suit, Advocate/Commissioners have already visited the suit property and filed detailed reports and plans in the suit. The trial court has also held that the petitioner is in encroacher in the suit property and he had constructed some portion in the suit property and decided the suit on merits. Now at this stage, this amendment application cant be allowed as there is no due diligence on the part of the petitioner and it amounts to fill up the lacuna for the petitioner and it will cause a great prejudice to the respondents. Further the nature and character of the suit will also gets changed if this application is allowed. Therefore this application is liable to be dismissed.

3. The petitioner is the judgment debtor/unsuccessful plaintiff in O.S.No.467 of 2008. The said suit was filed by the petitioner for a bare



C.R.P.(MD) No.806 of 2020

injunction. On the other hand, the first to third respondents along with their mother Mariathankam filed O.S.No.479 of 2008 for a declaration and mandatory injunction.

4. The dispute pertains to land in R.S.No.209/2 measuring an extent of 334 sq.fts. The petitioner claims to have purchased the property on the strength of Ex.D2 Sale Deed dated 22.09.2008 from one Francis and put up the construction. The respondents on the other hand claim that the property was their family property which was settled by their parents by a Settlement Deed dated 22.03.2004.

5. The Trial Court by its common Judgment and Decree dated 25.03.2014 has dismissed O.S.No.467 of 2008 filed by the petitioner and partly allowed and partly dismissed O.S.No.479 of 2008 filed by the first to third respondents along with their mother. In so far as the declaration of title in the land was confined only to 1 Cent.

6. The petitioner filed an appeal in A.S.Nos.56 & 57 of 2014 which is said to be pending as on date. At the same time, the first to third respondents along with their mother filed A.S.No.78 of 2014. Under these



C.R.P.(MD) No.806 of 2020

circumstances, the petitioner filed I.A.No.1 of 2019 in A.S.No.57 of 2014

to amend the plaint in O.S.No.467 of 2008.

7. A specific case of the petitioner is that unless the amendment is allowed, the petitioner cannot establish his rights over the suit schedule properties measuring an extent of 334 sq.fts. in R.S.No.209/2.

8. The learned counsel for the first to third respondents submits that the impugned order is well reasoned and requires no interference. He further submits that the first to third respondents obtained permission from the court and put up the constructions. The petitioner had encroached the property and attempted to trespass into the property. It is submitted that the amendments cannot be allowed as the amendment will change the nature of the suit.

9. The learned counsel for the first to third respondents has drawn attention to the passage from the common Judgment and Decree dated 25.03.2014 in O.S.No.467 of 2008 and O.S.No.479 of 2008, wherein, it has been observed as under:-



C.R.P.(MD) No.806 of 2020

..... ஆனால் மேற்படி பி.சா.ஆ.1 ஆவணத்தில் ரீ சர்வே எண்.209/2 பொறுத்து எந்த சொத்துக்களும் எழுதிக்கொடுக்கப்படவில்லை. பின்னிட்டு சர்வேயரை வைத்து அளந்து பிறகே பி.சா.ஆ.2 ஆவணத்தை வாதி ஏசுமரியான் அவரது சகோதரர் பிரான்சீஸ் என்பவரிடமிருந்து எழுதி வாங்கியுள்ளதாக தெளிவாக தெரியவருகிறது. ஆனால் மேற்படி பிரான்சீஸ்-க்கு பழைய சர்வே எண்.5475ல் 73வது கண்டத்தில் எந்தவித உரிமையும் கிடைத்திருக்காத பட்சத்தில் தேவையில்லாமல் ரீ சர்வே எண்.209/2 ஐ சேர்த்து பி.சா.ஆ.2 ஆவணம் உருவாக்கப்பட்டுள்ளதாக இந்நீதிமன்றம் காண்கிறது. மேலும் ரீ சர்வே எண்.209/20ல் இந்த வழக்கின் 1 முதல் 3 பிரதிவாதிகளுக்கு ஏற்கெனவே 1 சென்ட் பாத்தியப்பட்டுள்ளதாக ஏற்கெனவே நாம் முடிவு செய்துள்ள சூழ்நிலையில் அதையும் சேர்த்து தேவையில்லாமல் ரீ சர்வே எண்.209/20ல் 2 1/2 சென்டை காட்டி பி.சா.ஆ.2 ஆவணம் உருவாக்கப்பட்டுள்ளதாகவும் தெளிவாக தெரியவருகிறது. எனவே வாதி ஏசுமரியானின் ஆக்கிரமிப்பில் உள்ள சொத்துக்களை பாதுகாப்பதற்காகவே பி.சா.ஆ.2 ஆவணம் உருவாக்கப்பட்டுள்ளதாக இந்நீதிமன்றம் காண்கிறது.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the first to third respondents. I have perused the impugned order dated 24.07.2020.

11. The petitioner has sought for amendment of the plaint at the appellate stage including the prayer for declaration and for mandatory injunction. Amendments to averments itself *ipso facto* would not



C.R.P.(MD) No.806 of 2020

determine *interse* dispute between the petitioner and the first to third respondent. Appeal is nothing but a continuation of the original proceedings. The court can be liberal when the amendments are sought for by the parties even at the appellate stage. Therefore, the impugned order is not sustainable.

12. It is further case of the petitioner that the first to third respondents have encroached upon the property during the pendency of the appeal. To what extent there is an alleged encroachment is to be decided by the Appellate Court after perusing the records.

13. Therefore, the impugned order has to go. The impugned order is liable to be set aside. Consequently, I.A.No.1 of 2019 filed by the petitioner for amendment of plaint stands allowed. It is open for the first to third respondents to raise all defences that are available in the manner known to law in the appeals pending before the said Court.

14. Considering the fact that appeals filed by the petitioner and the appeal filed by the first to third respondents are pending for a long period i.e. 9 years since they were filed, the Sub Court, Kuzhithurai shall



C.R.P.(MD) No.806 of 2020

endeavour to dispose of all the appeals, as expeditiously as possible, preferably, within a period of 9 months from the date of receipt of a copy of this order.

15. This Civil Revision Petition stands allowed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

22.06.2023

Internet: Yes/No

Index: Yes/ No

jen

To

The Sub Court, Kuzhithurai



WEB COPY



C.R.P.(MD) No.806 of 2020

**C.SARAVANAN, J.**

jen

C.R.P.(MD) No.806 of 2020

22.06.2023