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C.R.P.(MD)Nos.1524 and 1525 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)Nos.1524 and 1525 of 2022

and

C.M.P.(MD)Nos.6500 and 6501 of 2022

1.S.Kalyani
2.Muthumurugan
Pandi (Died)
3.Veeramani
4.Sivasami
Rajarajan (Died)
5.Lathamathi
6.Senbhagavalli
7.Kalyan
8.Siva

.. Petitioners in both the C.R.Ps.

Versus

1.Uthayakumar
2.Thangapandian

.. Respondents in both the C.R.Ps.

Prayer in C.R.P.(MD)No.1524 of 2022:- Petition filed under Article 227 of the Constitution of India, to call for the entire records relating to fair and decreetal order dated 04.07.2022, passed in I.A.No.2 of 2021 in O.S.No.240 of 2021, on the file of the District Munsif-cum-Judicial Magistrate Court, Tiruchuli.

Prayer in C.R.P.(MD)No.1525 of 2022:- Petition filed under Article 227 of the Constitution of India, to call for the entire records relating to fair and decreetal order dated 04.07.2022, passed in I.A.No.3 of 2021 in O.S.No.240 of 2021, on the file of the District Munsif-cum-Judicial Magistrate Court, Tiruchuli.



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For Petitioners in both the C.R.Ps. : Mr.V.Panneer Selvam

For R1 in both the C.R.Ps. : No Appearance

For R2 in both the C.R.Ps. : Mr.S.Velrajan

COMMON ORDER

Since the issues involved in the present Civil Revision Petitions and the parties are one and the same, they are heard together and disposed of by this common order.

2.The petitioners are aggrieved by the impugned orders dated 04.07.2022, passed in I.A.Nos.2 and 3 of 2021 in O.S.No.240 of 2021 by the learned District Munsif-cum-Judicial Magistrate, Tiruchuli.

3.The petitioners have filed I.A.No.2 of 2021 for re-opening the case and I.No. 3 of 2021 for amending the plaint in O.S.No.240 of 2021 in respect of measurement of the property and to change the name of the Village from A.Mukkulam to Undurnikidakulam, based on the documents obtained by the petitioners from the Tahsildar, Tiruchuli, vide proceedings dated 27.09.2021, bearing reference in O.Mu.Aa.5/5404/2021. Relevant portion of the above said communication of the Tahsildar, Tiruchuli, reads as under:-

"விருதுநகர் மாவட்டம், காரியாபட்டி வட்டம், முடக்கன்குளம் கிராமத்தைச் சேர்ந்த திரு.கல்யாணி, த/பெ.சிவகாமி என்பவர் திருச்சுழி வட்டத்திற்குட்பட்ட வருவாய் கிராமம் அ.முக்குளம் என்பதும், உண்டுறுமிகிடாக்குளம் என்பதும் ஒரே கிராமத்தின் பெயரா? அல்லது இரு



வேறு கிராமங்களா? என்று சான்று வழங்குமாறு பார்வையில் காணும் மனுவில் கோரியுள்ளார். இந்நேர்வில் உண்டுமிகிடாக்குளம் என்பதும் அ.முக்குளம் என்பதும் ஒரே கிராமம் என்ற விபரம் இதன்மூலம் மனுதாரருக்கு தெரிவித்துக்கொள்ளப்படுகிறது."

4.The Trial Court has dismissed both the applications primarily on the ground that the petitioners have filed the proceedings at the stage after the case was listed for arguments.

5.It is submitted that the suit was filed based on the Patta and Title Deed, describing the property measuring an extent of 56 cents situated at A.Mukkulam Village. It is submitted that on measuring the boundaries, the extent of the land is 58 cents. Therefore, in case, any dispute, the boundary will prevail over the extent of the property in the document.

6.The learned counsel for the petitioners submits that although the applications have been filed after the case was listed for arguments and after the trial was completed, no prejudice will be caused to the respondents, if the applications are allowed. Hence, the learned counsel submits that the impugned orders dated 04.07.2022, passed by the learned District Munsif-cum-Judicial Magistrate, Tiruchuli, are liable to be interfered with.

7.Per contra, the learned counsel for the second respondent submits that the aforesaid applications have been filed belatedly. It is submitted that the suit was



originally filed before the District Munsif Court at Aruppukottai as O.S.No.278 of 2013. After the suit was filed, the second respondent had also filed written statement as early as 23.09.2013 and thereafter, the petitioners' side evidence was closed on 24.10.2019. It is the further case of the second respondent that an additional written statement was also filed with the leave of the Court on 22.12.2020 and the respondents' side evidence was closed on 07.10.2021. It is submitted that during the interregnum, the petitioners had filed I.A.No.1043 of 2013 for amending Paragraphs 2, 5 and 7 in the plaint and the said I.A. was allowed on 08.11.2013.

8.It is further submitted that I.A.No.6 of 2022 was also filed by the petitioners to bring the legal representatives of the deceased petitioners/plaintiffs, which came to be allowed on 30.03.2022. I.A.No.8 of 2022 filed by the petitioners was also allowed on 07.04.2022 as a consequence of the order dated 30.03.2022, passed in I.A.No.6 of 2022.

9.It is further submitted that the Advocate Commissioner appointed by the Court below, has visited the property on 20.01.2018 and given a report as early as 25.10.2018, to which, the petitioners have also filed their objections as early as 14.11.2018. It is submitted that when the case was listed for arguments on 02.12.2021, the petitioners have filed I.A.Nos.2 and 3 of 2021 for the above-mentioned reliefs. It is therefore submitted that the said I.As. have been rightly



rejected by the Court below and the impugned orders passed by the learned District Munsif-cum-Judicial Magistrate, Tiruchuli, does not call for any interference and hence, these two Civil Revision Petitions are liable to be dismissed with exemplary costs, as the petitioners are interested only for prolonging the longevity of the litigation.

10.I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the second respondent.

11.I.A.Nos.2 and 3 of 2021 are inspired from the proceedings of the Tahsildar, Tiruchuli, vide his proceedings dated 27.09.2021, bearing reference in O.Mu.Aa. 5/5404/2021, wherein it has been clarified as above and the content of which, has already been extracted above.

12.By allowing the amendment, *ipso facto* the Court would not determine the *inter se* rights of the parties one way or the other. The description of the property also does not get altered, as admittedly, the suit property has been inspected by the Advocate Commissioner on 20.01.2018 and a report was also given by him as early as 25.10.2018, to which, there is an objection by the petitioners on 14.11.2018. What the petitioners are seeking is to substitute the name of the Village A.Mukkulam to Undurnikidakulamm, which belong to the same Village. Therefore, the other



consequential change, which has been sought for by the petitioners in respect of the boundaries, will also make no difference as the boundary will prevail over the extent of the property in the document. However, the fact remains that the petitioners have been extremely negligent in not moving an application for amendment of the plaint after filing several other applications in the past in respect of the suit that came to be instituted in the year 2013. Therefore, the Court below should have allowed the amendment, although it was belated, as this is a genuine case for amending the plaint. At the same time, the Court below should have ordered cost on the petitioners.

13.Considering the fact that the property is classified as punja land, the petitioners shall pay a sum of Rs.10,000/- towards costs on the respondents within a period of two weeks from the date of receipt of a copy of this order, failing which, this order shall stand vacated automatically *sine die* without further reference to this Court. All the issues relating to the reliefs sought for in the plaint are left open to be canvassed at the time of arguments.

14.In view of the above, the impugned orders dated 04.07.2022, passed in I.A.Nos.2 and 3 of 2021 in O.S.No.240 of 2021, by the learned District Munsif-cum-Judicial Magistrate, Tiruchuli, are set aside and the said I.As. are allowed accordingly. The learned District Munsif-cum-Judicial Magistrate, Tiruchuli, shall



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dispose the suit in O.S.No.240 of 2021 as expeditiously as possible, preferably, within a period of nine months from the date of receipt of a copy of this order. It is made clear that in case the respondents refused to receive the cost, the petitioners shall deposit the same to the credit of the suit within the time limit prescribed herein.

15.The Civil Revision Petitions are allowed in terms of the above observations and direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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19.06.2023

To

The District Munsif-cum-Judicial Magistrate,
Tiruchuli.



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C.SARAVANAN, J.

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Common Order made in
C.R.P.(MD)Nos.1524 and 1525 of 2022

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