

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2016

Coram:

THE HONOURABLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

C.R.P.(PD).35 of 2015
and
M.P.No.1 of 2015

1.Subramani
2.Rajeswari
3.Geethamani

... Petitioners

vs.

1.Perumal Gounder
2.Eswaran

.... Respondents

Petition filed under Section 227 of the Constitution of India against the fair and decreetal order dated 29.10.2014, made in I.A.No.715 of 2014 in O.S.No.202 of 2008, on the file of the First Additional District Munsif, Erode.

For Petitioners : Mr.C.Munusamy

For Respondents : Mr.M.Guruprasad

ORDER

The defendants have challenged the order, allowing an amendment application, by filing this civil revision petition.

2. The suit was filed by the respondents/plaintiffs for permanent injunction restraining the petitioners/defendants from interfering with their peaceful possession. A written statement has been filed denying the title of the plaintiffs.

3. Though the written statement has been filed in the year 2009 and additional written statement was filed in the year 2014, the plaintiffs have filed I.A.No.715 of 2014, to amend the plaint, so as to include the prayer for the relief of declaration that they are entitled to take water from the suit well and corresponding amendment with respect to the prayers in paragraph Nos.XIII and XIV etc.

4. The said application was resisted by the petitioners, who are defendants, by stating that it is only a delaying tactics adopted by the plaintiffs and the written statement was filed as early as in 2009, but the amendment application is filed after the trial had commenced.

5. Heard the learned counsel on either side and perused the records.

6. When the title of the plaintiffs is denied, it is incumbent upon the plaintiffs to amend the plaint and include the prayer for declaration of title also, as the subsequent suit will be barred by Order

2 Rule 2. CPC. Therefore, the learned trial Judge is right in allowing the application.

7.The contention of the learned counsel for the petitioners/defendants is that the amendment application came to be filed after six years, that too, after commencement of the trial, which caused serious prejudice to the interest of the defendants.

8.In view of the above submission, this Court is of the opinion that the defendants should be sufficiently compensated for the time taken by the plaintiffs to amend the plaint, by including a new prayer.

9. In the result, the civil revision petition is disposed of on condition that the plaintiffs pay a sum of Rs.3000/- (Rupees three thousand only) to the defendants, within three weeks from the date of receipt of a copy of this order. The defendants are at liberty to file additional written statement, if any. Connected miscellaneous petition is closed.

PUSHPA SATHYANARAYANA,J.

msk

To

The First Additional District Munsif, Erode.

C.R.P.No.35 of 2015

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