

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.No.1868 of 2013
and M.P.No.1 of 2013

1. Poovayee
 2. Chandrasekaran
 3. Sellamuthu
 4. Rajavelu
 5. Arul
 6. T.Ganesan
- ... Petitioners/Plaintiffs

Vs

1. The Commissioner,
Thiruchengode Municipality.
 2. Lokambal
- ... Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 02.03.2013 passed in I.A.No.948 of 2011 in O.S.No.710 of 2004 on the file of Additional District Munsif Court, Thiruchengode.

For Petitioners : Mr.A.V.Arun

For Respondents : Mr.V.S.Narayana Rao,
for R1

Mr.P.Mani,
for R2

O R D E R

The plaintiffs in the original suit are the petitioners in the Revision. Originally, the suit was filed by them against the Commissioner, Thiruchengode Municipality, arraying him as the sole defendant, for a permanent injunction not to disturb the peaceful possession and enjoyment of the plaintiffs in respect of the suit property, claiming the suit property to be the absolute property of the plaintiffs. After the filing of the suit, Lokambal, the second respondent herein, who contends that the suit property belongs to the Municipality and it is a public passage, got herself impleaded as second defendant. On her impleadment, the petitioners/plaintiffs filed an application in I.A.No.948 of 2011 praying for amendment of the plaint to make averments regarding the alleged acts committed by the

second respondent/second defendant and to include a prayer of injunction against her also.

2. The learned Trial Judge, after hearing both sides, by order dated 02.03.2013, dismissed the said application on the ground that the amendment was sought to be made based on a cause of action, which arose subsequent to the filing of the suit. As against the said order, the present Civil Revision Petition has been filed.

3. The respondents have entered appearance through counsel. The arguments advanced on both sides are heard.

4. The necessity to seek permission to amend the plaint to include the averments regarding the alleged acts of violation of the right of the petitioners/plaintiffs arose because of the impleadment of the second respondent. The necessity to seek the relief of injunction against the second respondent also arose pursuant to the impleadment of the second respondent as second defendant in the original suit. Though the second respondent would contend that she has completed the construction of the building in her property and hence, the prayer for injunction not to use the suit property as an access to take the building materials has become infructuous, the said contention seems to have been made on a misconception of the scope of the relief sought to be made against the second respondent.

5. As pointed out supra, the suit property is claimed by the petitioners/plaintiffs to be their absolute property and they claim injunction not only against the municipality, but also against the second respondent /second defendant not to disturb their alleged exclusive possession and enjoyment of the suit property. Again, the petitioners/plaintiffs have also chosen to include a prayer for injunction restraining the second respondent from dumping the garbage in the suit property. If at all the second respondent has not chosen to volunteer to become a party defendant, the necessity to seek such reliefs against the second respondent/second defendant would not have arisen. Having chosen to volunteer to get impleaded, which is a development subsequent to the filing of the suit, the second respondent/second defendant cannot contend that the subsequent events leading to her impleadment in the suit should not be taken into account in deciding whether the amendment sought for is to be granted or not.

6. The learned Trial Judge misguided itself by assuming that the cause of action against the second respondent having arisen subsequent to the filing of the suit, no relief can be sought for against her in the present suit itself, even though she was impleaded as a party respondent subsequently.

7. Viewed from any angle, the order of the trial Court dismissing the application for amendment cannot be said to be made in proper exercise of the jurisdiction conferred on the trial Court. The order of the trial Court cannot be sustained and the same deserves to be interfered with and set aside in exercise of the power of superintendence of this Court under Article 227 of the Constitution of India.

8. In the result, the Revision succeeds and the same is allowed. The order of the Trial Court, dated 02.03.2013 made in I.A.No.948 of 2011 is set aside. I.A.No.948 of 2015 shall be stand allowed. The petitioners/ plaintiffs shall carry out amendment within two weeks from the date of receipt of a copy of this order. Thereafter, the respondents/defendants shall be granted time to file additional written statement. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Munsif Judge,
Thiruchengode.

2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.A.V.Arun, Advocate, S.R.No.16387
+lcc to Mr.P.Mani, Advocate, S.R.No.16697

C.R.P. No.1868 of 2013
and M.P.No.1 of 2013

tej (CO)
srg (22/03/2016)

WEB COPY