

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.2968 OF 2016

CMP NO.15010 OF 2016

1.A.Gopalsamy

2.G.Saravanan

3.Kathirvel

... Petitioners

Versus

1.P.Shanmugam

2.S.Dharmaraj

3.S.Chinnamurugan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 29.06.2016 in I.A.No.618 of 2016 in O.S.No.5 of 2009 on the file of Principal District Munsif Court, Erode.

For Petitioners : Mr.S.Kaithamalaikumaran

For Respondents : Mr.Naveen Kumar Murthi

ORDER

The petitioners filed a suit for mandatory and permanent injunction with regard to the plaint schedule property. The suit was dismissed by the Principal District Munsif, Erode on 21 December 2012.

2. The petitioners filed an appeal before the Sub Court, Erode in A.S.No.68 of 2013. The First Appellate Court remanded the matter for fresh consideration.

3. Thereafter, the petitioners filed an application for amendment of the plaint, seeking a decree of mandatory injunction. The application was opposed by the respondents. The Trial Court dismissed the application. The said order is under challenge in this Civil Revision Petition.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

5. The suit filed by the petitioners in O.S.No.5 of 2009 was dismissed by the Trial Court. When the matter was taken up before the

First Appellate Court, the petitioners filed an interlocutory application for appointment of Advocate Commissioner to inspect the suit property. The learned Appellate Judge was of the view that the matter requires fresh consideration by the Trial Court. The learned Appellate Judge set aside the judgment and decree in O.S.No.5 of 2009 and directed the Trial Court to decide the matter afresh.

6. The Advocate Commissioner inspected the property on 01 April 2016. The Advocate Commissioner appears to have made certain observation with respect to LBP Canal running north – south on the pathway.

7. The petitioners, immediately after filing report by the Advocate Commissioner, filed the application for amendment in I.A.No.618 of 2016. The petitioners in the affidavit filed in support of I.A.No.618 of 2016 contended that on 31 March 2016 itself the respondents obliterated the LBP Canal and the same necessitated the petitioners to seek the prayer for mandatory injunction.

8. The learned Trial Judge dismissed the application with an observation that after remand, it is not open to the petitioners to amend the plaint.

9. It is true that in the normal circumstances, when a remand is made to decide a particular issue, the Court has to confine to the said issue. The Trial Court cannot expand the proceedings. However, in the present case, the petitioners have taken out a contention that it was only after the remand of the suit by the First Appellate Court, the respondents trespassed into the property.

10. According to the petitioners, just one day prior to the inspection by the Advocate Commissioner and more particularly on 31 March 2016, the respondents committed the act of obliterating the LBP canal. It was only under the said circumstances, the petitioners filed the application for amendment. Even after amendment of the plaint, it is for the petitioners, being the plaintiffs in the suit, to prove that they are entitled to a decree as prayed for in the amended plaint.

11. There is no question of deciding the merits or otherwise of the case, pleadings in the amended plaint, while considering the application for amendment. I am therefore of the view that the Trial Court was not correct in dismissing the application for amendment.

12. In the result, the order dated 29.06.2016 is set aside. The application in I.A.No.618 of 2016 is allowed. The respondents shall be given reasonable time to file additional written statement.

13. The Civil Revision Petition is allowed with the above observation. No costs. Consequently, connected civil miscellaneous petition is closed.

10.11.2016

TK

To

The Principal District Munsif
Erode.

K.K.SASIDHARAN, J.

TK

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