

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.207 of 2014
& M.P.No.1 of 2014

1.Kaliyaperumal
2.Muthusamy

.. Petitioners

Vs.

1.C.Kaliyaperumal

2.The District Collector
Cuddalore District,
Cuddalore.

3.The Block Development Officer,
Kammapuram Union,
Kammapuram,
Vridhachalam Taluk.

4.The President,
Dharmanallur Panchayat
Vridhachalam Taluk.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the

Constitution of India, against the fair and decretal order dated 01.07.2013 made in I.A.No.625 of 2012 in O.S.No.412 of 2009 on the file of the Principal District Munsif Court, Vridhachalam.

For Petitioners : Mr.C.Munusamy

For R1 : No Appearance

For R2 & 3 : Mr.M.Venugopal
Special Government Pleader

For R4 : G.Anabaya Chozhan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 01.07.2013 made in I.A.No.625 of 2012 in O.S.No.412 of 2009 on the file of the Principal District Munsif Court, Vridhachalam.

2. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.412 of 2009 on the file of the Principal District Munsif Court, Vridhachalam. The petitioners filed the said suit for mandatory injunction and permanent injunction against the first

respondent and also permanent injunction against the respondents 2 to 4. The first respondent filed written statement and is contesting the suit. In the said suit, petitioners filed an application in I.A.No.1355 of 2009 for appointment of an Advocate Commissioner. The said application was allowed, Advocate Commissioner was appointed, he inspected and measured the suit property and filed his report.

3. According to the petitioners, from the report of the Advocate Commissioner, it is seen that the first respondent has encroached the property and made construction in the suit property. In view of the same, it is necessary to seek relief of recovery of possession. In the circumstances, the petitioners filed I.A.No.625 of 2012 under Order VI Rule 17 and 18 of C.P.C., for amendment to include the relief of recovery of possession. The respondents did not file any counter.

4. The learned Judge, considering the averments made in the affidavit and materials available on record, dismissed the application on the ground that based on the Advocate Commissioner's report, the petitioners cannot seek for amendment of the plaint.

5. Against the said order of dismissal dated 01.07.2013 made in I.A.No.625 of 2012, the present Civil Revision Petition is filed by the petitioners.

6. Heard the learned counsel for the petitioners as well as the respondents 2 to 4 and perused the materials available on record. Though notice was served on the first respondent and his name was printed in the cause list, there is no representation on behalf of the first respondent either in person or through counsel.

7. From the order of the learned Judge, it is seen that the learned Judge has not considered the averments made in the affidavit and contention of the learned counsel for the petitioners and whether the petitioners have made out any case for amendment to include the relief of recovery of possession. The learned Judge has not passed any speaking order and dismissed the application on the ground that based on Advocate Commissioner's report, amendment cannot be ordered. In view of the same, the impugned order of the learned Judge is liable to be set aside and it

is hereby set aside.

8. For the above reason, the Civil Revision Petition is allowed. The matter is remitted back to the Trial Court to consider the application afresh and pass orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2017

Index : Yes/No

dm/kj

To

1.The Principal District Munsif,
Vridhachalam.

2.The District Collector
Cuddalore District,
Cuddalore.

3.The Block Development Officer,
Kammapuram Union,
Kammapuram,
Vridhachalam Taluk.

V.M.VELUMANI, J.

dm/kj



C.R.P.(PD)No.207 of 2014
& M.P.No.1 of 2014

17.11.2017
WEB COPY