

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.2355 and 2356 of 2013

& M.P.No.1 of 2013

& C.M.P.No.5562 of 2016 in C.R.P.No.2355 of 2013

1.N.Palaniraja
2.N.Sakthivel

.. Petitioners in
both C.R.Ps'

Vs.

1.Thulasidoss
2.Rajendran
3.Nagalingam
4.Kangavalli
5.Adhilakshmi
6.Ponnammal
7.Komala

.. Respondents
in both C.R.Ps'

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal orders dated 25.09.2011 made in I.A.Nos.1048 & 1050 of 2012 in O.S.No.60 of 2011 on the file of the learned District Munsif, Madurantakkam, Kanchipuram District.

For petitioners : Mr.N.Nagu Sah

For R1 & R2 : Mr.M.S.Subramanian

For R3 to R7 : Given up

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal orders dated 25.09.2011 made in I.A.Nos.1048 & 1050 of 2012 in O.S.No.60 of 2011 on the file of the learned District Munsif, Madurantakkam, Kanchipuram District.

2.The issues and parties involved in both the Civil Revision Petitions are one and the same. Therefore, disposed of by this common order.

3.The petitioners are the defendants 1 and 2, respondents 1 and 2 are the plaintiffs and respondents 3 to 7 are the defendants 3 to 7 in O.S.No.60 of 2011 on the file of the learned District Munsif, Madurantakkam, Kanchipuram District. The respondents 1 and 2 filed the said suit for declaration of their easementary right of access to their A Schedule property through the B Schedule property as an easement of necessity and for permanent injunction, restraining the petitioners and other defendants from interfering with their peaceful possession and enjoyment of the right of access through the B Schedule property.

According to the respondents 1 and 2, they purchased the property with right of way on the eastern side. After purchase, the petitioners and other defendants requested the respondents 1 and 2 to shift the pathway to the western side. Now the petitioners and other defendants are blocking the way on both the sides. The respondents 1 and 2 filed two applications viz., I.A.Nos.1206 and 1207 of 2011 for amendment of the application, I.A.No.531 of 2011 filed for interim injunction. They also filed I.A.Nos.1048 and 1050 of 2012 to amend the application filed for injunction, I.A.No.531 of 2011 to include alternative relief, that the respondents 1 and 2 have right of way on the eastern side.

4.The petitioners filed counter affidavit on 11.09.2012 and submitted that the purchase by the father of the petitioners is without any pathway. In view of the same, the respondents 1 and 2 have no right of pathway through the petitioners' land. The sale deed does not provide any pathway. There is no Cart track or road in the land purchased by the petitioners' father. The Cart track mentioned is only on the western side of the petitioners' property and not in their land. By the present application, the respondents 1 and 2 are introducing new cause of action and new case which is inconsistent to the earlier stand taken by the respondents 1 and 2.

The applications in I.A.Nos.1206 and 1207 of 2011 filed to amend the plaint and the injunction petition were dismissed as withdrawn on 21.11.2011. They filed the present applications I.A.No.1048 and 1050 of 2012 only to drag on the proceedings.

5.Before the learned Judge, both the petitioners and respondents did not let in any oral evidence. The respondents 1 and 2 marked 2 documents as Exs.P1 and P2 and petitioners marked Exs.R1 and R2. The learned Judge, considering the averments in the affidavit, counter affidavit, plaint, the documents filed by the parties and materials on record, allowed the applications by common order dated 25.09.2012, holding that whether the respondents 1 and 2 have right of pathway in the eastern side or western side of the property can be decided only after letting in evidence on behalf of the parties. The objection of the petitioners that father of the petitioners' have not purchased the property with pathway also can be determined only after due enquiry in the main suit.

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6.Against the said orders dated 25.09.2011 made in I.A.Nos.1048 & 1050 of 2012 in O.S.No.60 of 2011, the present Civil Revision Petitions are filed by the petitioners.

7.The learned counsel for the petitioners reiterated the averments in the counter affidavit and contentions made in the grounds of revision and submitted that the respondents 1 and 2 cannot take a stand inconsistent to the earlier one taken by them and in support of his contention relied on the judgment reported in **“1976 (4) 320 (Modi Spinning & Weaving Mills Co. Ltd., & another Vs. Ladha Ram & Co.)”**:

“It is true that inconsistent pleas can be made in pleadings. The defendants cannot be allowed to change completely the case and substitute an entirely different and new case. In the instant case, the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings. But it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed, the plaintiff will be irretrievable prejudiced by being denied the opportunity of extracting the admission from the defendants.”

8.Heard the learned counsel appearing for the petitioners as well as respondents 1 and 2 and perused the materials available on record.

9.From the materials available on record and from the impugned order, it is seen that as per the sale deed, a pathway has

been mentioned in the eastern side of the property. According to the respondents 1 and 2, the petitioners requested the respondents 1 and 2 to shift the pathway to the western side. After the respondents 1 and 2 shifted the pathway to the western side, the petitioners are preventing the respondents 1 and 2 to use the pathway on western side as well as the eastern side. The petitioners denied existence of pathway in their property. The learned Judge, considering the above rival contentions of the respondents 1 and 2 and petitioners and documents marked as Exhibits, held that the right of pathway can be decided only by letting in evidence by both the parties. The objection of the petitioners that father of the petitioners' purchased the property without any pathway also can be decided only by letting in evidence in the main suit. It is well settled that any amendment sought for must be considered liberally and amendment sought for can be rejected only when it is inconsistent with earlier pleadings or causes prejudice to the other side or introduces a new cause of action or new case. In the present case, the respondents 1 and 2 are seeking alternative remedy that they have right of way in the eastern side. This amendment does not introduce any new cause of action or contradictory stand to the earlier stand taken by the respondents 1 and 2 or causes any prejudice to the petitioners and other defendants.

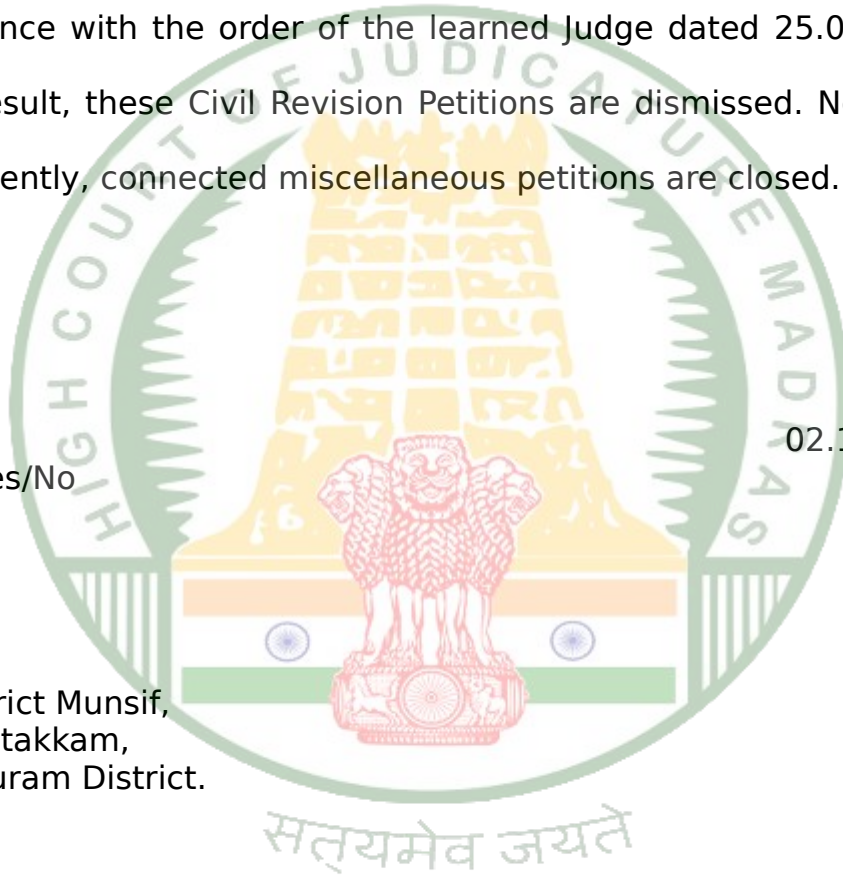
10.The learned Judge, considering all the above facts, has given cogent and valid reason for allowing the applications. In the circumstances, there is no illegality or irregularity warranting interference with the order of the learned Judge dated 25.09.2012. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No
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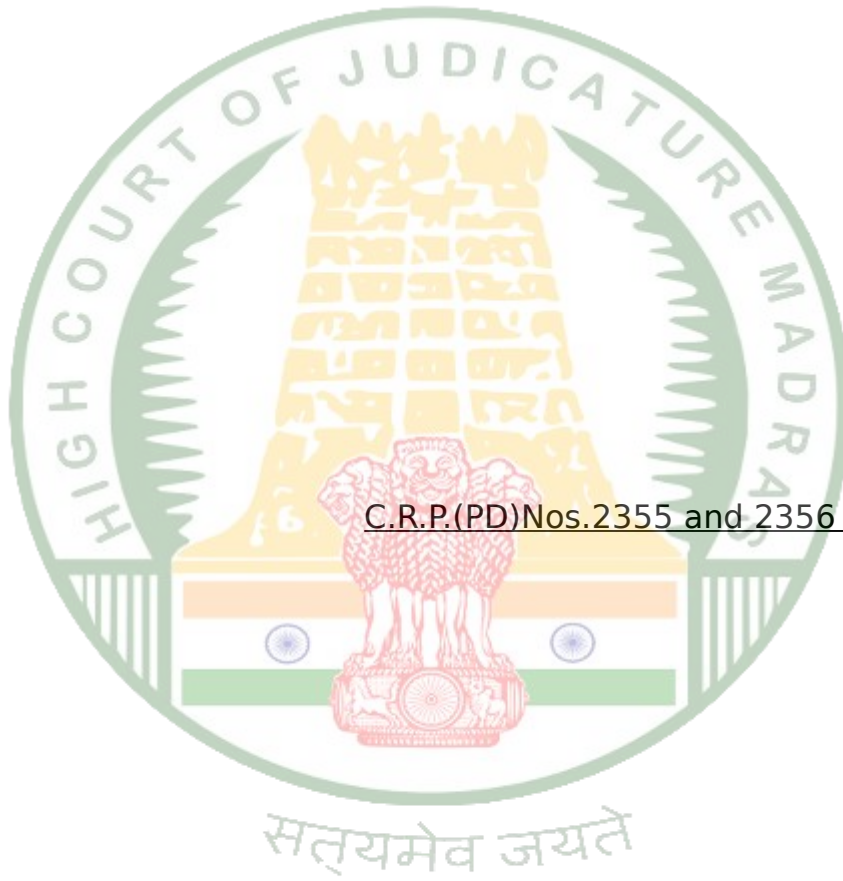
The District Munsif,
Madurantakkam,
Kanchipuram District.



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V.M.VELUMANI, J.

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