

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.06.2017

Coram:

The Honourable Ms.**Justice V.M.VELUMANI**

C.R.P.(PD)No.3929 of 2010
and M.P.1 of 2010

1. V.S.Ranganayaki
2. V.S.Shanmugasundaram
3. V.S.Elango
4. Ponnathal

... Petitioners

Vs.

- 1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Balasundaram Road,
Coimbatore,
- 2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Jawan Bhavan, Gandhiji Road, Erode
- 3.The Executive Officer,
A/M.Sokkanachiamman Thirukovil,
Nanjai Kilampadi, Erode District,
Now rep. By the Executive Officer,
A/M.Kongalamman Koil,
Erode District.
4. Hariram Alazhan
5. Nataraj
6. K. Balasubramaniam
7. Pitchamuthu

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the

Constitution of India, against the fair and decretal order dated 15.07.2010 made in I.A.No.634 of 2010 in O.S.No.415 of 2005 on the file of the Principal Sub Court, Erode.

For Petitioner : M/s.N.Manokaran
For RR1 to R3 : Mr. T.Jayaramaraj
Government Advocate (CS)
For R4 & R7 : Exparte before the Lower Court

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 15.07.2010 made in I.A.No.634 of 2010 in O.S.No.415 of 2005 on the file of the Principal Sub Court, Erode.

2. The petitioners are the plaintiffs and the respondents are the defendants in O.S.No.415 of 2005. The petitioners have filed the suit for declaration, mandatory injunction and for permanent injunction. The respondents have filed their written statement and are contesting the suit.

3. The trial commenced. On the side of the plaintiff P.W.1 was examined and P.W.1 was partly cross examined, At that stage, the petitioners filed an Interlocutory Application in I.A.No.634 of 2010 for amendment of the plaint stating that the respondents 4 to 7 have encroached 3 ½ cents in the petitioners' property and put up a

superstructure. The petitioners have stated that they have mentioned about the encroachment in the plaint and did not mention the extent of the encroachment and prayed for amendment. The respondents 4 to 7 denied and opposed the above said application and submitted that they have not encroached the property belonging the petitioners. The property belongs to the Temple and there is no cart track and no separate pathway to the land of the petitioners.

4. The learned Judge considering the averments contained in the affidavit and counter affidavit and materials on record, dismissed the application.

5. Heard both sides and perused the materials available on record.

6. From the materials on record, it is seen that the petitioners have filed the application for amendment of the plaint after commencement of the trial and as per order VI Rule 17 CPC and Section 151 of CPC, only if the party seeks amendment and file an application for amendment at earlier stage, then an application for amendment could be ordered. But, in the present case, the petitioners

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have not filed the application earlier. Further, it is seen that the application filed for amendment of the plaint is only on the basis of the report of the Advocate Commissioner and such reason is not valid for amending the plaint. Hence the learned Judge dismissed the application.

7. The learned Judge, considering all the materials available on record, dismissed the application by giving cogent and valid reasons. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 15.07.2010. In the result, the Civil Revision Petition is dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

13.06.2017

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Index: Yes/No
To
Principal Sub Court,
Erode.

C.R.P.(PD)No.3929 of 2010
<http://www.judis.nic.in>