

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2017

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CRP.No.3761 of 2013
and M.P.No.1 of 2013

1.Ramasamy Gounder
2.Selvaraj

... Petitioners

Vs.

1.Mookkayee @ Kuppayee
2.Ramasamy
3.Kulandaivel

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order 16.04.2013 made in I.A.No.231 of 2013 in O.S.No.85 of 2010 on the file of the Principal District Munsif Court, Namakkal by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manokaran
For Respondents : Mr.T.Dhanyakumar

O R D E R

This revision is at the instance of defendants 1 & 2 as against allowing I.A.No.231 of 2013 in O.S.No.85 of 2010 on the file of Principal District Munsif Court, Namakkal, which has been filed by the plaintiffs to amend certain portion in the plaint and inclusion of a prayer.

2. According to the learned counsel for the revision petitioners/defendants 1 & 2, even before filing the Commissioner's report, the trial Court ought not to have allowed this petition.

3. However, the learned counsel for the respondents/plaintiffs would submit that in view of the subsequent development with regard to the subject matter of the suit, namely cart-track, this amendment is necessary, otherwise the suit will become a futile exercise.

4. I have considered the rival submissions, perused the impugned order and the materials on record.

5. The respondents/plaintiffs laid the suit for declaration that the suit property is a cart-track, actually claimed easementary rights. They also claimed consequential injunction. The petitioners/defendants 1 & 2 have filed their written statement disputing the very existence of the said cart-track. An Advocate Commissioner has been appointed to inspect the suit property and to file his report with a map. The report is yet to be filed.

6. At this juncture, the plaintiff filed an application in I.A.No.231 of 2013 to amend the plaint to include the averment that subsequent to the filing of the suit, the defendants have obliterated the cart-track and also sought for it, a mandatory injunction to restore the said cart-track. This amendment has been allowed by the trial Court.

7. Normally the Court has to take note of the matter as existed as on the date of the filing of the suit. But there are certain exceptions. Even

after filing the suit, if some subsequent event has taken place as in the present case, the cart-track is the subject matter, it is required to be brought to the notice of Court. Plaintiffs allege that the very cart-track has been obliterated by the defendants. In such circumstances, bringing the said aspect to the notice of Court by way of amendment becomes necessary. In the facts and circumstances, I do not find any irregularity in impugned order passed by the trial Court.

8. In view of the foregoing, this revision fails and it is dismissed. However, no order as to costs. Consequently, connected miscellaneous petition is closed.

09.03.2017

ds

To:
The Principal District
Namakkal.

DR.P.DEVADASS,J.

ds

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