



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P. (MD) No.1053 of 2017 (PD)

and

C.M.P. (MD) No.4655 of 2017

1. Kovil Raj

2. Maharaja

... Petitioners/Petitioners/
Defendants1&3

Vs.

1. Thavamani

2. Selvan

3. Raj Kumar

4. Pattu Kani

5. Jesuraja

6. Thava Sundari

... Respondents/Respondents/
Plaintiffs

Prayer:- Civil Revision Petition filed the Under Article 227 of the Constitution of India, against the order passed in I.A.No.18 of 2015, in O.S.No.228 of 2013, dated 22.07.2015, on the file of the Additional District Munsif, Thoothukudi.

For Petitioners : Mr.T.A.Ebenezer

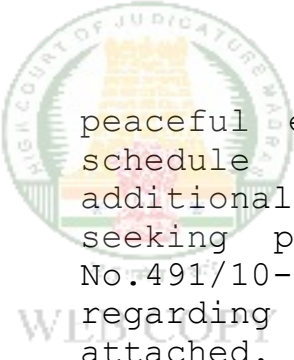
For Respondents : Mr.S.Kadarkarai

ORDER

This revision petition is directed against the order of the Trial Court passed in I.A.No.18 of 2015, in O.S.No.228 of 2013, dated 22.07.2015, dismissing the application to make counter claim by the defendants/revision petitioners by way of additional written statements.

2. Heard the learned counsel for the revision petitioners and the learned counsel for the respondents and perused the materials available on record.

3. The suit in O.S.No.228 of 2013 is for declaration and permanent injunction restraining the revision petitioners from interfering the peaceful possession and enjoyment of the second schedule property, which is an extent of 5 cents in Survey No.491/10. The revision petitioners herein has filed their written statement as early as 07.11.2013 claiming that the second schedule property is a common path way and a common Well and except ~~claiming joint enjoyment of the property~~, they have no other claim over the second schedule property and they are not against the



peaceful enjoyment of the plaintiff in respect of the second schedule property. Thereafter on 15.07.2014, by way of an additional written statement, a counter claim has been made seeking partition of 06.42 cents of vacant site in Survey No.491/10-C-2 and also declaration and permanent injunction regarding the common pathway marked as ABCDEF in the plan attached.

4. After considering all aspects, the Trial Court has rightly dismissed the petition on the ground that having restricted their defence regarding common enjoyment of the pathway and Well located in the second schedule property, an entirely new plea of ownership over Survey No.419/10-C-2 and preliminary decree for partition is sought, which is not within the scope and ambit of the suit, where counter claim can be made. A new cause of action with new facts cannot be entertained by way of counter claim that too belatedly after filing written statement. Further, the present plea is diagonally opposite to the stand taken by the defendants in the written statement. Hence, this Court finds no error in the order passed by the Trial Court.

5. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To
The Additional District Munsif,
Thoothukudi.

+1 CC to M/s. S.KADARKARAI, Advocate, SR No. 58378

PJL
PSM/RSK/SAR2/12.06.2017/2P/3C

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