



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2017

WEB COPY

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD) Nos. 183 and 184 of 2017 (PD)

and

CMP(MD) Nos. 796 and 797 of 2017

1.Veerapandian

2.Chellaiah

: Revision Petitioners in both CRPs/
Respondents/Defendants

Vs.

Mayandi

: Respondent in both CRPs
Petitioner/Plaintiff

Prayer in CRP(MD).No.183 of 2017: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.400 of 2016 in O.S.No.33 of 2016 on the file of the Principal District Munsif, Manamadurai, dated 03.12.2016.

Prayer in CRP(MD).No.184 of 2017: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.401 of 2016 in I.A.No. 109 of 2016 in O.S.No.33 of 2016 on the file of the Principal District Munsif, Manamadurai, dated 03.12.2016.

For Petitioner : Mr.V.P.Rajan

O R D E R

The Civil Revision Petition in CRP(MD).No.183 of 2017 is filed to set aside the fair and decreetal order passed in I.A.No.400 of 2016 in O.S.No.33 of 2016 on the file of the Principal District Munsif, Manamadurai, dated 03.12.2016.

The Civil Revision Petition in CRP(MD).No.184 of 2017 is filed to set aside the fair and decreetal order passed in I.A.No.401 of 2016 in I.A.No. 109 of 2016 in O.S.No.33 of 2016 on the file of the Principal District Munsif, Manamadrai, dated 03.12.2016.



2. The petitioners are defendants in O.S.No.33 of 2016, on the file of the Principal District Munsif Court, Manamadurai. The respondent filed suit for permanent injunction restraining the petitioners from interfering with his use of common pathway, measuring 6 ft., leading to the respondent's property. The respondent filed I.A.No.109 of 2016 for appointment of an Advocate Commissioner. The petitioners filed a written statement and contested the suit.

3. The respondent filed I.A.No.400 of 2016 in O.S.No.33 of 2016 for amending the schedule to the suit as a common pathway measuring to an extent of 6 ft., East West, and 50 ft., North South and he also filed I.A.No.401 of 2016 to alter the extent and boundaries in I.A.No.109 of 2016.

4. According to the respondent, he filed suit the for permanent injunction, restraining the petitioners from interfering with his peaceful possession and enjoyment of the common public pathway measuring an extent of 6 ft x 50 ft leading to his property. The petitioners 1 and 2 were trying to encroach 3' ft x 50' ft each in the common pathway. In the prayer portion of the schedule of the plaint, the respondent has mentioned only 6 ft., as public pathway instead of 6' ft East-West x 50' Feet North-South leading to his house and boundaries. In the application in I.A.No.109 of 2016 for appointment of an Advocate Commissioner has also mentioned the same and failed to mention the correct boundaries. Therefore, he filed present applications to amend the prayer and boundaries as 6' ft East-Westx50' feet North-South as Public path way leading to his house and the boundaries mentioned therein.

5. The petitioners filed a counter and opposed the said application and submitted that the respondent has not described the suit property and it is not clear what is the suit property. The respondent is not entitled to amend the prayer in the suit, but, he has to withdraw the suit and file a fresh suit and by allowing the amendment, a new cause of action will arise.

6. The learned Judge considering the averments made in the plaint, affidavit and counter affidavit and arguments of the counsels on either side allowed both the applications for amending the suit as well as the application in I.A.No.109 of 2016 holding that the respondent mentioned the public pathway as 6 ft. instead of 6' ft East-West x 50' Feet North-South. The petitioners will not be prejudiced as the issues are not framed and amendment sought for is only a pre-trial amendment and imposed cost of Rs.300/- each petition to be paid to petitioners.

<https://hcservices.ecourts.gov.in/hcservices/>

7. Against the above said order, the present Civil Revision Petitions have been filed.



8. The learned counsel appearing for the petitioners submitted that the learned Judge failed to consider the provision of Order VI Rule 17 of CPC in a proper perspective and the learned Judge failed to see that by amendment, the respondent is introducing a new cause of action and a new plea and altering the nature of the description of the suit property, by which the respondent creates confusion and the learned Judge ought to have dismissed the application for amendment.

9. I have heard the learned counsel appearing for the petitioners and perused the materials available on record.

10. The respondent filed the suit for injunction restraining the petitioners from using the pathway, measuring an extent of 6 ft East-West X 50' feet North-South. The respondent in the plaint stated that the petitioners are trying to encroach 3' ft x 50' ft each and trying to prevent the respondent from using pathway leading to his house. In the prayer portion and in the schedule of the property the respondent has mentioned 6' feet pathway instead of 6' feet East-West x 50' ft North-South and by the amendment the respondent is not seeking any new relief and introducing a new cause of action or altering the nature of the suit.

11. The learned Judge considering the averments made in the plaint and concluded that the Advocate who drafted the plaint has indiscriminately used the word "suit property" which has caused little confusion in identifying the suit property and a proper reading of the plaint would reveal that the respondent is seeking relief with regard to common public pathway leading to his house.

12. The learned Judge has considered all the materials on record in a proper perspective and has given cogent and valid reasons for allowing the applications in I.A.No.400 of 2016 in O.S.No.33 of 2016 and I.A.No.401 of 2016 in I.A.No.109 of 2016 in O.S.No.33 of 2016. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

13. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/



To
The Principal District Munsif,
Manamadurai,

+1cc to Mr.V.P.Rajan, Advocate Sr.No.5224

TRP

VB/MR/06.04.2017/4P/3C

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