



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2159 of 2013 (PD)
& M.P.(MD)No.1 of 2013

1.R.Thangavel (Died)
2.T.Maruthayee (Died)
3.T.Singaravelan
4.M.Ponnusamy
5.S.Amutha .. Petitioners
(5th petitioner is brought on record as legal
representative of the deceased petitioners 1 and 2,
vide Court order dated 30.01.2017, made in
C.M.P.(MD)No.751/2017 in C.R.P.
(MD)No.2159/2013)

Vs.

1.Natarajan, S/o.Vaiyapuri Gounder
2.V.Ulaganathan (Died)
3.V.Subbulakshmi
4.Thiruvani, W/o.Dinesh Kumar
5.Manimozhi, W/o.Parthiban .. Respondents
(Respondents 3 to 5 are brought on record
as LR's. of the deceased 2nd respondent,
vide Court order dated 16.02.2017, made
in C.M.P.(MD)Nos.941 to 943 of 2017 in
C.R.P.(MD)No.2159 of 2013)

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.07.2013, passed in I.A.No.274 of 2013 in O.S.No.506 of 2005 by the learned Additional District Munsif, Karur.

For Petitioners : Mr.K.K.Ramakrishnan

For R1 & R3 to R5 : Mr.M.Karthikeya Venkitachalapathy

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 31.07.2013, passed in I.A.No.274 of 2013 in O.S.No.506 of 2005 by the learned Additional District Munsif, Karur.

2. The petitioners 1 to 4 are the plaintiffs and the respondents 1 and 2 are the defendants in the suit in O.S.No.506 of 2005 on the file of the District Munsif Court, Karur. The



petitioners 1 to 4 filed the suit for permanent injunction restraining the respondents 1 and 2 from in any way interfering with the possession and enjoyment of the petitioners 1 to 3 in 'A' schedule suit property; for declaration to declare the right, title, interest of the fourth petitioner in 'B' schedule suit property; for permanent injunction restraining the respondents 1 and 2 in any way interfering with the fourth petitioner's possession and enjoyment of 'B' schedule suit property; for mandatory injunction directing the respondents 1 and 2 to join with the petitioners 1 to 4 in demarcating and form 12 ft. pathway in the middle of the suit survey field and for permanent injunction restraining the respondents 1 and 2 in any way interfering with the petitioners 1 to 4, right of use in 'C' schedule pathway either by putting up any obstructions or otherwise.

3. During the pendency of the Civil Revision Petition, the second petitioner died on 01.07.2014 leaving her legal heirs, viz., the petitioners 1, 3 and one Amutha. Before taking steps to implead the said Amutha in the Civil Revision Petition, on 04.10.2014 the first petitioner, viz., Thangavel also died, leaving the third petitioner and Amutha, as his legal heirs. Therefore, the said Amutha was impleaded as fifth petitioner, vide Court order dated 30.01.2017, made in C.M.P.(MD)No.751 of 2017 in C.R.P.(MD)No.2159 of 2013. Subsequently, the second respondent also died on 14.05.2015, leaving one V.Subbulakshmi, Thiruvani and Mani Mozhi, as his legal heirs. Hence, they were impleaded as respondents 3 to 5 in the Civil Revision Petition, vide order dated 16.02.2017, made in C.M.P.(MD)Nos.941 to 943 of 2017.

4. The petitioners 1 to 4 filed the suit for the relief stated above and pending suit, the petitioners 1 to 4 filed I.A.No.274 of 2013 for amendment of the plaint to include 37 cents in 'B' schedule suit property. According to the petitioners 1 to 4, due to typographical and clerical error, the said extent was not mentioned in 'B' schedule suit property. They came to know about the same only after the report filed by the Advocate Commissioner, who was appointed by this Court, in C.R.P.No.2563 of 2010.

5. The respondents 1 and 2 filed counter affidavit and denied the averment that by typographical error, 37 cents was not included in 'B' schedule suit property. The suit is of the year 2005. The petitioners 1 to 4 filed application only after 8 years of filing of the suit. The petitioners 1 to 4 want to add some more properties in 'B' schedule suit property without any basis. The petitioners 1 to 4 have filed their objections to the Advocate Commissioner's report and now, they are seeking amendment based on the Advocate Commissioner's report. The proposed amendment is ~~being used by the petitioner~~ ^{being used by the petitioner}. By proposed amendment, the cause of action, the nature and character of the suit will be changed and it will cause hardship to the respondents 1 and 2. The intention of the



petitioners 1 to 4 is not bona fide, but it is mala fide and they filed the application for amendment only in order to get unlawful enrichment.

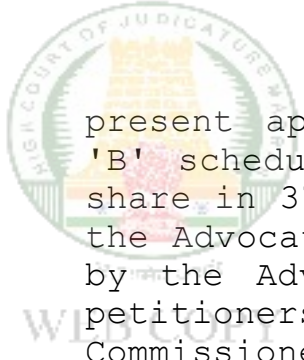
6. The Additional District Munsif, Karur, considering the averments made in the affidavit, counter affidavit, the report of the Advocate Commissioner and the objections filed by the petitioners 1 to 4 to the Advocate Commissioner's report, dismissed the application, holding that the proposed amendment is contrary to the relief of declaration claimed by the petitioners 1 to 4 originally in the plaint.

7. Against the said order of dismissal, dated 31.07.2013, the petitioners have come out with the present Civil Revision Petition.

8. The learned counsel for the petitioners reiterated the averments made in the grounds of the Civil Revision Petition and submitted that the petitioners have taken steps in the year 2005 itself for appointment of Advocate Commissioner to measure the suit property. The said application was dismissed. The petitioners filed C.R.P.No.787 of 2006 before this Court and this Court directed the trial Court to dispose of the I.A. filed for appointment of Advocate Commissioner, on merits. Thereafter, the trial Court dismissed the I.A. Therefore, the petitioners have filed C.R.P.No.776 of 2007 and the same was allowed. Subsequently, the petitioners have filed C.R.P.No.2563 of 2010 and in the said Civil Revision Petition, this Court appointed an Advocate Commissioner. The Advocate Commissioner, after inspection, filed his report only in the year 2013 and immediately, the petitioners 1 to 4 have filed I.A.No.274 of 2013 for amendment. The respondents 1 and 2 also stated in the written statement that only upon measuring S.No.327 and entire portion stated in the document dated 20.10.1984, the Court can decide the relief of amendment. Therefore, no prejudice will be caused to the respondents by amendment sought for by the petitioners. Further, a larger extent including 37 cents will be available for equal division for the petitioners as well as the respondents without changing the cause of action and same is also a part of 'B' schedule suit property.

9. In support of his submissions, the learned counsel for the petitioner relied on the judgment of a Full Bench of this Court reported in **2007 (1) MLJ 320 [Hi. Sheet Industries Vs. Litelon Limited and others]**.

10. The learned counsel for the respondents submitted that the petitioners have come out with the specific case that the fourth ~~petitioner~~ ~~is~~ ~~selling~~ ~~a~~ ~~portion~~ ~~of~~ ~~the~~ ~~property~~ ~~in~~ ~~S.No.327~~, ~~he~~ ~~is~~ ~~in~~ ~~possession~~ ~~of~~ ~~54½~~ ~~cents~~ ~~and~~ ~~sought~~ ~~for~~ ~~declaration~~ ~~in~~ ~~respect~~ ~~of~~ ~~the~~ ~~said~~ ~~extent~~ ~~only~~. Now, the petitioners filed the



present application seeking amendment to include more extent in 'B' schedule suit property and they claimed that they have half share in 37 cents in S.No.327. The petitioners filed objection to the Advocate Commissioner's report with regard to measurement made by the Advocate Commissioner. Having made such objection, the petitioners are now seeking the relief based on the Advocate Commissioner's report. Further, by the claim of half share in 37 cents in S.No.327 through this amendment, the petitioners are introducing a new cause of action and prayed for dismissal of the Civil Revision Petition.

11. I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

12. The petitioners have filed suit for mandatory injunction as well as for declaration to declare the right, title and interest of the fourth petitioner in 'B' schedule suit property. According to the petitioners, the property in S.No.327 was allotted to the fourth petitioner and after selling a portion of the said property, 57¼ cents is in possession of the fourth petitioner. The petitioners by proposed amendment, is seeking to include 37 cents in 'B' schedule suit property and they seek a decree that they have half share in 37 cents along with the respondents. By this proposed amendment, the petitioners are introducing a new case and cause of action. Having claimed that the fourth petitioner is owner of 'B' schedule suit property, measuring 54¼ cents, now, by this amendment, the petitioners are seeking half share in 37 cents, in addition to 57¼ cents. The petitioners' contention is that based on the report of the Advocate Commissioner, the amendment is sought for, has no force. The petitioners have filed objection to the report of the Advocate Commissioner. Having filed objection to the report of the Advocate Commissioner, the petitioners are not entitled to seek proposed amendment based on the report of the Advocate Commissioner. The learned Additional District Munsif, Karur, has considered all these aspects and dismissed the application by exercising the power conferred on him. There is no irregularity or illegality in the said order warranting interference by this Court.

13. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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To

The Additional District Munsif,
Karur.

+1 cc to MR.K.K.Ramakrishnana, ADVOCATE, SR NO: 10647

+1 cc to MR.M.Karthikeya Venkitachalapathy, ADVOCATE, SR NO: 10200

**C.R.P (MD) No.2159 of 2013 (PD)
& M.P. (MD) No.1 of 2013
22.02.2017**

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MKV-CM-MSA/15.3.2017/5P-4C