

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1080 of 2015
& M.P.No.1 of 2015

Samiappan (dead)
 Rangasamy (dead)

- 1.Lalitha
- 2.Vijayakumar
- 3.Parimalam
- 4.Ramathal
- 5.Thirumurthy
- 6.Tamilselvan
- 7.R.Saraswathi
- 8.R.Nandakumar
- 9.R.Jegadeesh

.. Petitioners

Vs.

- 1.Ramasamy (deceased)
- 2.Achiammal
- 3.Kamalam
- 4.Muthusamy

.. Respondents

(R2 to R4 brought on record as Lrs.
 Of deceased R1 vide Court order
 dated 16.02.2018 made in C.M.P.No.2984 to
 2986/2018 in C.R.P.No.1080/2015)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.01.2013 made in I.A.No.1421 of 2011 in O.S.No.114 of 2008 on the file of the District Munsif Court, Avanashi.

For Petitioners : Mr.S.Vinoth Kumar
for Mr.K.Govi Ganesan

For R1 : Died

For R2 to R4 : Mr.D.R.Arun Kumar
for Mr.V.Anandha Moorthy

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 17.01.2013 made in I.A.No.1421 of 2011 in O.S.No.114 of 2008 on the file of the District Munsif Court, Avanashi.

2.The petitioners are the plaintiffs 3 to 11, deceased first respondent is the defendant and respondents 2 to 4 are impleaded as legal heirs of the deceased defendant in O.S.No.114 of 2008 on the file of the District Munsif Court, Avanashi. Originally, the petitioners 1 to 3 along with deceased Samiappan and deceased Rangasamy filed the said suit against the deceased first respondent for declaration to declare that they are the absolute owners of the suit property and for permanent injunction restraining the deceased first respondent from interfering with the peaceful possession and enjoyment of the suit property. Pending suit, the plaintiffs 1 and 2 died and the petitioners 4 to 9 were brought on record as the legal heirs of the plaintiffs 1 and 2. The petitioners filed I.A.No.707 of

2008 for appointment of an Advocate Commissioner to inspect the suit property and to file a report. The Advocate Commissioner was appointed. He inspected the property with the help of Surveyor and filed the report on 24.11.2009.

3.The petitioners filed the present I.A.No.1421 of 2012 under Order VI Rule 17 of C.P.C for permission to amend the plaint to include the relief of recovery of possession, directing the deceased first respondent to surrender the vacant possession of the property mentioned in the 'B' schedule and consequential amendment in the plaint. According to the petitioners, after filing of the suit, the deceased first respondent has trespassed into the suit and encroached portion of the suit property. The petitioners are residing away from the property. Taking advantage of their absence, the deceased first respondent has encroached portion of the suit property. By amendment, no new cause of action or new case is introduced and deceased first respondent will not be prejudiced by amendment.

4.The deceased first respondent filed counter affidavit and contended that amendment now sought for is contrary to the original pleadings. If amendment is ordered, the deceased first

respondent will be greatly prejudiced as he will not be in a position to take water from the well situated in the suit property.

5.The learned Judge considering the averments in the affidavit, counter affidavit and report of the Advocate Commissioner, dismissed the application.

6.Against the said order of dismissal dated 17.01.2013 made in I.A.No.1421 of 2011 in O.S.No.114 of 2008, the petitioners have come out with the present Civil Revision Petition.

7.Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

8.The petitioners are seeking amendment on the ground that they came to know about the encroachment of the deceased first respondent from the report of the Advocate Commissioner. From the impugned order of the learned Judge, it is seen that the Surveyor has given a plan to the Advocate Commissioner which is contrary to the earlier plan shown to the Advocate Commissioner. The learned Judge considered the plan issued by the Tahsildar and concluded that plan given by the Surveyor is not correct and Advocate

Commissioner also mentioned the same in the report. For the above reason, the learned Judge has dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 17.01.2013 made in I.A.No.1421 of 2011 in O.S.No.114 of 2008.

9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.02.2018

Index : Yes/No

gsa

To

The II Additional District Judge,
Puducherry.

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V.M.VELUMANI,J.

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