



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) No.848 of 2018

and

C.M.P. (MD) .No.3709 of 2018

Subramanian (died)

1.Muthiah

2.S.Ramalakshmi

3.Pradeepkumar

4.S.Meenakshinathan .. Revision Petitioners/Petitioners 2 to 5/  
Plaintiffs 2 to 5

vs.

1.Mariammal

2.Annathai .. Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal dated 07.02.2018 in I.A.No.937 of 2017 in O.S.No.50 of 2010 on the file of the learned District Munsif, Kovilpatti.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.B.Rajesh Saravanan

### ORDER

The plaintiffs in O.S.No.50 of 2010 on the file of the learned District Munsif, Kovilpatti are the revision petitioners herein. They filed I.A.No.937 of 2017 for amending the plaint. The same was dismissed, by order, dated 07.02.2018. Questioning the same, the Civil Revision Petition has been filed.

2. Heard the learned counsel on either side.

3. The learned counsel for the respondent pointed out that the original plaintiff, namely, Subramanian had taken out an amendment petition in I.A.No.281 of 2011 and that the same was allowed. But it was set aside by order, dated 08.08.2014 in C.R.P. (MD).No.1973 of 2011. Therefore, the present exercise is only to over come the effect of the earlier order, dated 08.08.2014.



4. Though the aforesaid submission carries considerable weight, it is seen that after the demise of the original plaintiff, his legal representatives have given a go by to the earlier prayer for injunction. They only want recovery of possession. In fact, the revision petitioners have taken the stand that the defendants committed encroachment on 20.10.2017.

5. This Court is of the view that in the light of the averments set out in I.A.No.937 of 2017, the amendment sought for deserves to be allowed. But then, the amendment will come into effect only from the date when I.A.No.937 of 2017 was filed. In other words, it will not relate back to the institution of the suit. The respondents are at liberty to file an additional written statement raising the plea of limitation and other contentions also. The revision petitioners are obliged to establish before the Court below that the so called encroachment by the defendants took place on the date given in the affidavit filed in support of I.A.No.937 of 2017.

6. With these observations, the order impugned in this Civil Revision Petition is set aside and the Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar(CS-IV)

To

The District Munsif,  
Kovilpatti.

+1. C.C. to M/S.H.Arumugam, Advocate SR.No. 84182

+1. C.C. to M/S.B.Rajesh Saravanan, Advocate SR.No. 83788

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