



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P (PD) (MD) .No.454 of 2011

in

M.P (MD) No.1 of 2011

P.Ravichandran

...Petitioner/Petitioner/Appellant

vs.

1.Painkulam Village Panchayat
represented by its President
Chandrakumar (father's name not known)
Office at Painkulam,
Painkulam Village,
Vilavancode Taluk,
Kanyakumari District.

2.Thankaraj

3.Sam Jeyasingh

4.Kingsly

5.The District Collector,
Kanyakumari.

(R5 is su-moto impleaded vide order dated 14.03.2011 and made in
CRP (MD) No.454 of 2011 & MP (MD) No.1 of 2011)

...Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 04.09.2010 made in I.A.No.210 of 2010 in A.S.No.27 of 2008 on the file of Subordinate Judge, Kuzhithurai and allow this revision petition.

For Petitioner : Mr.M.Mohan

For R2 to R4 : Mr.N.Dilipkumar

For R1 & R5 : Mr.A.Thiyagarajan
Government Advocate

**O R D E R**

The Civil Revision Petition has been filed to set aside the fair and decreetal order dated 04.09.2010 made in I.A.No.210 of 2010 in A.S.No.27 of 2008 on the file of Subordinate Judge, Kuzhithurai.

2. The brief facts of the case are as follows:

The suit in O.S.No.841 of 2004 was filed for permanent injunction and to restrain the first defendant from giving any permission to the defendants 2 to 4 or any other to construct any building within 300 meter radius from the suit property till the expiry of the quarry permit of the plaintiff dated 20.09.2004. The said suit was dismissed with costs. Against which, the plaintiff has filed an appeal suit in A.S.No.27 of 2008 on the file of the Subordinate Judge, Kuzhithurai. In the said Appeal Suit, I.A.No.210 of 2010 was filed for making amendment. The learned Subordinate Judge has dismissed the amendment application stating that though the petitioner stated that he was permitted to quarry upto 20.09.2009, he sought injunction till 20.09.2004 only and he has not produced any document to show that the permission was extended by the Government.

3. The learned counsel for the petitioner mainly argued that the learned Subordinate Judge ought to have allowed the amendment petition since the amendment will not change the character of the appeal suit and as per Section 36 of Tamil Nadu Mines and Minerals Concession Rules, the buildings should be constructed within the radius of 300 metres from the suit property and the same was not considered by the lower appellate court and therefore he seeks to set aside the order dated 4.9.2010 passed in the amendment application.

4. The learned counsel appearing for the respondents 2 to 4 submitted that the lower appellate court has rightly dismissed the amendment application and he prays for dismissal of the Civil Revision Petition.

5. Heard the learned counsel for the petitioner, the learned counsel for the respondents 2 to 4 and the learned Government Advocate appearing for the respondents 1 and 5. This Court has perused the materials available on record.

6. It is also brought to the notice of this Court by the learned counsel appearing for the respondents 2 to 4 that the said quarry permission was cancelled on the basis of the order passed by this Court in W.P(MD)No.363 of 2017 and the same was suppressed by the petitioner. Further, before the trial Court, the Advocate Commissioner's report was produced and on perusing the



said report, the lower court has found that no construction was made within 300 meters. It is also stated in the order of the lower court that seeking amendment with regard to the permission from the Government is not necessary since the question to be decided in the appeal suit is controversy between the parties and therefore, the amendment sought regarding the renewal of licence will be no way useful to any parties to decide the issue. In my considered opinion, there is no error in the order passed by the learned Subordinate Judge, Kuzhithurai in I.A.No. 210 of 2010 in A.S.No.27 of 2008.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub Assistant Registrar

To

- 1 The Subordinate Judge,
Kuzhithurai.
2. The District Collector,
Kanyakumari

+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No. 45031

CM/VSA

JAM/23/05/2018/ JC/SAR 3/ 3P-4C

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