



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) No.1137 of 2013 (PD)

and

M.P. (MD) No.1 of 2013

Thangavel ... Petitioner/1st Respondent/Ist Defendant

Vs.

1.Chandra

2.Thirumoorthy

3.Sivakumar

4.Vaidyalingam

... Respondents/Petitioners/Plaintiffs

... Respondent/2nd Respondent/2nd Defendant

PRAYER: Petition filed under Section 227 of Constitution of India, to set aside the order dated 28.01.2013 passed by the District Munsif Court, Musiri in I.A.No.1327 of 2012 in O.S.No.22 of 2006.

For Petitioner	: Mr.T.Lenin Kumar
For R1 & R2	: Mr.K.Govindarajan
For R3 & R4	: No appearance

ORDER

This Civil Revision Petition is filed by the first defendant in the suit in O.S.No.22 of 2006 on the file of the District Munsif Court, Musiri.

2.The brief facts that are necessary for the disposal of this civil revision petition are as follows:-

The Suit in O.S.No.22 of 2006 was filed by the respondents 1 to 3 for permanent injunction restraining the revision petitioner from interfering with the peaceful possession and enjoyment of the property and for mandatory injunction to remove the encroachment in the suit property by the first defendant and for other reasons. The Suit is also for compensation. The suit was mainly contested by the first defendant by filing a detailed statement. It is not necessary to elaborate the contention of the defendants in the written statement. During the pendency of the suit, the plaintiffs filed an application in I.A.125 of 2006 in O.S.No.22 of 2006 for appointment of an Advocate Commissioner to note down the physical features and to file a report. A report is filed. The plaintiff thereafter filed another application in I.A.No.1327 of 2012 for amendment of plaint. The amendment is filed mainly to introduce a further prayer of mandatory injunction to remove the compound wall in the plaint 5th schedule which is described as a common pathway. This petition was allowed and the first defendant in the suit has filed this revision challenging the order allowing the petition for amendment of plaint.



3.The learned counsel appearing for the revision petitioners submitted that the respondents have come forward with a new I.A.No.1327 of 2012, Which is not referred to either in the plaint or in the subsequent proceedings. It is further stated that the existence of the pathway as alleged in the affidavit filed in support of the petition is not supported by any document. The learned counsel further relying upon the pleadings and the commissioner's report pointed out that the existence of the pathway as alleged in the present amendment is not even referred or can be deduced from the stand taken by the respondents, even at that time, when the appointment of Commissioner to inspect the property was sought for. Since the plea is likely to enlarge the scope of the present suit, the learned counsel for the revision petitioners submitted that the application is not maintainable.

4.However, the learned counsel appearing for the respondents submitted that no prejudice is likely to be caused to the respondents as the new plea is not contrary to the original plaint that was filed by the plaintiff. The learned counsel appearing for the respondents further submitted that the amendment application is filed immediately, after the Commissioner's report and therefore, no serious prejudice is likely to be caused to the other side.

5.Having regard to the rival submissions, this Court is of the view that the amendment in this case cannot be denied for the reasons stated by the revision petitioner. First of all, this Court is convinced that the amendment is not for including a new cause of action or for a further relief which is totally unconnected with the lis.

6.The learned counsel for the revision petitioners submitted that the petitioners dispute the existence of a pathway as it is contended by the plaintiff. The application cannot be dismissed, merely, on the ground that there is a dispute with regard to the existence of pathway. The counsel for the petitioner submitted that the new prayer for mandatory injunction is barred by limitation. As held by the trial Court, the same can be decided in the main suit. It is also open to the petitioner to file an additional written statement.

7.As a result, this Civil Revision Petition is dismissed and the order passed by the District Munsif Court, Musiri, in I.A.No.1327 of 2012 in O.S.No.22 of 2006 is confirmed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (CS-II)

/True copy/



To
The District Munsif , Musiri.

+lcc to Mr.K.Govindarajan, Advocate, SR.No.74203

+lcc to Mr.T.Lenin Kumar, Advocate, SR.No.74109

C.R.P. (MD) No.1137 of 2013 (PD)
and

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