



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2018

CORAM

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**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

C.R.P. (PD) (MD) Nos.380 and 381 of 2013  
and  
M.P. (MD) No.1 of 2013

1.Duraipandi Nadar  
2.Isravel Thangachamy  
3.Arputha Jeyaraj

: Petitioners/Petitioners/Defendants  
(in both petitions)

**Vs.**

1.Lakshmanan  
2.M.Perumal

: Respondents/Respondents/Plaintiffs  
(in both petitions)

**Common Prayer:** Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 26.06.2012 passed in I.A.Nos.2072 and 2073 of 2011 in O.S.No.42 of 2011 on the file of Principal District Munsif Court, Tenkasi.

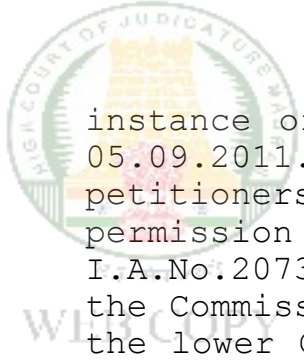
For Petitioners in both petitions : Mr.S.S.Thesigan  
For Respondents in both petitions : Mr.D.Nallathambi

**COMMON ORDER**

The defendants in the suit in O.S.No.42 of 2011 on the file of Principal District Munsif Court, Tenkasi is the revision petitioners in both revision petitions.

2.The respondents herein as plaintiffs filed the suit in O.S.No.42 of 2011 before the Principal District Munsif Court, Tenkasi for a declaration that the suit property is a pathway located in poramboke and for a consequential injunction restraining the revision petitioners from encroaching the suit property. The suit is also for mandatory injunction directing the revision petitioners to remove the encroachment, which they have made obstructing the suit path way.

3.After the filing of a detailed written statement by the revision petitioners, an Advocate Commissioner was appointed at the



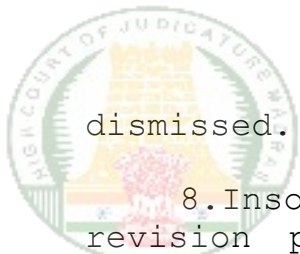
instance of the plaintiffs, who, in turn, has filed his report on 05.09.2011. After the report was received by the Court, the revision petitioners filed I.A.No.2072 of 2011 in O.S.No.42 of 2011 seeking permission to file additional written statement and another I.A.No.2073 of 2011 in O.S.No.42 of 2011 for filing objections to the Commissioner's report. Since both applications were dismissed by the lower Court, the defendants have filed the above Civil Revision Petitions.

4. Insofar as I.A.No.2072 of 2011 in O.S.No.42 of 2011 is concerned, the revision petitioners are only the defendants. In the affidavit filed in support of the petition, the revision petitioners have stated that some 3<sup>rd</sup> parties are also in encroachment of the suit property and that therefore the suit is bad for non-joinder of necessary parties. It is their further contention that the persons, who have encroached a portion of the suit property are also proper and necessary parties and that if the suit is proceeded further without impleading them, it will lead to multiplicity of proceedings.

5. The trial Court considering the fact that the additional written statement is not necessary and that the question whether the 3<sup>rd</sup> parties referred to in the additional written statement are necessary and proper parties has no relevance in this context, dismissed the petition. The trial Court further found that the contention of the defendants / revision petitioners in the affidavit filed in support of the petition to the effect that the Advocate Commissioner's report discloses encroachment by others is factually incorrect.

6. *Prima facie* this Court justify the order passed by the trial Court in the given circumstances. The first plaintiff is the *dominus litis* and he has the right to decide as to who should be added as party to the suit and against whom he seeks relief. In this case, factually it has been found that the Commissioner's report does not reveal any encroachment by others. The contention of the learned Counsel for the revision petitioners that there is also encroachment by others is not relevant in the present suit. Since the revision petitioners have filed their written statement on the basis of their right, they cannot be allowed to raise a new plea in the additional written statement belatedly in order to enlarge the scope of litigation.

7. In this case, no prejudice is likely to be caused to the revision petitioners, if the other parties are not added as a party to the proceedings. The suit is for removal of encroachment in pathway by defendants. In the additional written statement, the further plea is that the Civil Court has no jurisdiction. When the plaintiff alleged obstruction of pathway, the suit for a declaration and consequential reliefs can be granted only by Civil Court. Hence, the additional written statement is filed only to drag on the proceedings. There is no merit in C.R.P(MD)No.380 of 2013 and hence



dismissed.

8. Insofar as C.R.P.(MD)No.381 of 2013 is concerned, this revision petition is against the order I.A.No.2973 of 2011 in O.S.No.42 of 2011 filed for the purpose of accepting the objections that was raised by the defendants to the Commissioner's Report. This application was closed on the ground that the objection was returned and hence closed. This order appears to be improper. When objection is filed by the contesting parties / defendants in the suit to the Advocate Commissioner's report, that cannot be rejected after returning the objections. Having regard to the fact that no other reason is given by the lower Court to close the application seeking permission to file objection to the Advocate Commissioner's report, this Court is unable to justify the order of the Principal District Munsif, Tenkasi in I.A.No.2073 of 2011 in O.S.No.42 of 2011.

9. As a result,

9.1. C.R.P.(MD)No.380 of 2013 is dismissed and the order passed by the learned Principal District Munsif Court, Tenkasi in I.A.No.2072 of 2011 in O.S.No.42 of 2011 is confirmed.

9.2. C.R.P.(MD)No.381 of 2013 is allowed and the order passed by the learned Principal District Munsif Court, Tenkasi, I.A.No.2073 of 2011 in O.S.No.42 of 2011 is set aside and I.A.No.2073 of 2011 in O.S.No.42 of 2011 stands allowed.

No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

**To**

1. The Principal District Munsif,  
Principal District Munsif Court,  
Tenkasi.
2. The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+ 1 CC TO Mr.D.NALLATHAMBI, ADVOCATE IN SR No. 67388

CMR

TE/JC/SAR-1 : 25/06/2018 : 3P/5C