

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

C.R.P.No.3630 of 2010

1.Masayan @ Rangasamy Gounder

2.Palaniyammal

....Petitioners/Appellant/Petitioner

Vs

1.K.Rangasamy Gounder

2.S.Periya Gounder

3.S.Kaliyanna gounder (Died)

4.R.Shanmugam

5.B.Paramasivam

6.S.Krishnan

7.V.R.Rajamanickam

8.Ponni

9.Rangasamy

10.Sumathi

[R8 to R10 brought on record as L.R.'s of the deceased

R3 vide Court order dated 06.03.2019 made in

C.M.P.No.13209 to 13211 of 2018 in C.R.P. (NPD).

No.3630 of 2010 (NSKJ)] Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition filed under article 227 of the Constitution of India against the order of the Subordinate Judge's Court at Rasipuram dated 13.09.2010 in I.A.No.25 of 2010 in A.S.No.40 of 2008.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.S.Kalyanaraman

for R1, R2, R4 to R7.

R3 - Died (Steps taken).

R8 to R10 - No appearance.

O R D E R

This Civil Revision Petition has been filed challenging the order of the Court below in rejecting the application to amend the decree.

2.The original suit has been filed for declaration of Item No.1 & 2 of the suit property in favour of plaintiffs. However, in respect of Item No.2, the suit was dismissed and in respect of Item No.1, the suit was decreed. In deciding the issue, the first appellate Court in Paragraph No.19 of its Judgment has considered Ex.B.2, Ex.C1 and Ex.C.2 and came to the conclusion that the defendant is entitled to four feet pathway from the South West Street to reach the house. Whereas, it appears that the decree has been drafted in respect of the 1st item of the suit property granting right to the plaintiffs. The application has been taken out by the defendant to amend that there must be an indication in the decree with regard to the right of the pathway as per Ex.B.2, Ex.C1 and Ex.C.2. Without recognizing such right, he cannot enjoy the property which is situated beyond the 1st item of the suit property. However, the trial Court has rejected the said application against which the present revision has been filed.

3.Heard both sides and perused the records.

4.The learned Counsel for the revision petitioner and respondents have fairly conceded the existence of the right of the four feet pathway in the suit property as noted by the first appellate Court. The said right has to be highlighted in the decree. In view of the same to avoid future dispute between the parties, this Court is inclined to modify the decree to include the right of the four feet pathway from south west street towards the defendant's house as observed by the first appellate Court in Paragraph No.19 of the Judgment. Such modification should be made in the decree.

5.Hence, the decree of the 1st appellate Court is set aside. The first appellate Court is directed to draft fresh decree in light of the observations made by this Court and also make Ex.B.2, Ex.C.1 and Ex.C.2 as part and parcel of the decree.

6.Accordingly, this Civil Revision Petition is allowed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

ay

To

1.The Subordinate Court, Rasipuram.

2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.S.Kalyanaraman, Advocate SR.No.31156

+1cc to Mr.P.Valliappan, Advocate SR.No.31445

C.R.P.No.3630 of 2010

CP(CO)
GMY(08/05/2019)



WEB COPY