

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P. (PD) No.4043 of 2014

and

M.P. No.1 of 2014

N. Kandasamy (Died)

1. K.Rajamani
2. Naresh babu
3. Suganyadevi

... Petitioners

Vs.

1. State of Tamil Nadu
Rep. By the District Collector,
Namakkal.

2. Thasildar,
Namakkal.

3. Revenue Inspector,
Kalappanaickenpatty,
Namakkal Taluk & District.

4. Village Administrative Officer,
Nadukombai,
Namakkal District.

5. Assistant Engineer,
PWD, Sarabanga, Namakkal.

6. Nalliappa Gounder,

7. Subramaniam
8. K.Manikandan
9. Mohan
10. C. Ramasamy

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 08.08.2014 made in I.A.No.644 of 2014 in O.S. No.1668 of 2004 on the file of Additional District Munsif Court at Namakkal.

For petitioners : Mr.T.I. Thirumalaisamy
For respondents : Mr. A. Manikandan,
Government Advocate (CS)
for R1, R2, R3 and R5.
Mr.L.Chandrakumar
for R7, R9 & R10.

ORDER

The instant Civil Revision Petition has been filed under Article 227 of the Constitution of India, challenging the order dated 08.08.2014 passed by the Additional District Munsif Court at Namakkal in I.A. No.644 of 2014 in O.S. No.1668 of 2004.

Brief facts leading to the filing of the instant revision petition filed under Article 227 of the Constitution of India

2. The petitioners are the plaintiffs in the suit O.S. No.1668 of 2004 pending on the file of the Additional District Munsif Court at Namakkal. The said suit was filed against the respondents / defendants

for declaration and permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule properties at Nadukombai village, Sendamangalam Sub-Registration District, Namakkal Registration District. The suit schedule properties comprises of six items. The 7th respondent /7th defendant has filed the written statement in the suit and subsequently the same was adopted by 6th, 8th to 10th respondents / 6th, 8th to 10th defendants. The second defendant, who is the Tahsildhar, Namakkal has also filed his written statement. Issues were also framed by the Trial Court and the trial also commenced. In the midst of trial, I.A. No.644 of 2014 in O.S. No.1668 of 2004 was filed by the plaintiffs seeking for amendment of the plaint filed in O.S No.1668 of 2004 under Order VI Rule 17 CPC. The amendment sought for in I.A. No.644 of 2014 by the plaintiffs, are as follows :-

1. In Para No.VIII in 29th line remove the sentence from "The original subdivision number south of 97/1 and 97/2 the same has been assigned as S. Nos.97/1B1 and 97/1B2 and substitute it as "The S. No.97/1 has been subdivided as S.No.97/1A and 97/1B. The S. No.97/1A has been subdivided as S. No.97/1A1, 97/1A2 and 97/1A3. The S. No.97/1B has been subdivided as S.Nos. 97/1B1 and 97/1B2.
2. In para No.VIII in 30th line remove the "S. No.97/2 and substituted it as "S. Nos.97/1B1 and 97/1B2".

3. In para No.XIII in 39th line remove the "S.No.97/2 and substituted it as "S.Nos. 97/1B1 and 97/1B2".
4. In the description of property in Item No.4 and in Item No.5 line No.2 remove the word "S.No.97/1" and substituted it as "S.No.97/1B".
5. In the description of property in Item No.5 in line No.4 remove the word "S. No.97/1B" and substitute it as "S.No.97/1B1".

3. According to the petitioners, the land bearing Survey No.97/1 has been subdivided as S.Nos.97/1A and 971B. According to him, there was further sub division of S.No.97/1A and it was sub divided as S Nos.97/1A1, 97/1A2 and 97/1A3. According to him, S No.97/1B was also further sub divided as S. Nos.97/1B1 and 97/1B2. It is their case that only after filing of the proof affidavit by DW1, they came to know about the sub divisions. It is also their case that at the time of filing the suit, the second plaintiff's husband has wrongly mentioned the survey number as S. No.97/1 instead of S.No. 97/1B in Item No.4 and 5 in the suit schedule properties and the description of the property was also wrongly mentioned in the body of the plaint. It is also pleaded in the affidavit filed in support of I.A. No.644 of 2014 that the amendment sought for by the petitioners / plaintiffs will not change the character of the suit.

4. A counter affidavit was also filed by the contesting 7th respondent / 7th defendant in I.A. No.644 of 2014, which was adopted by 6th and 8th to 10th respondents, who are 6th and 8th to 10th defendants in the suit. Except for stating that no sufficient reasons have been given in the affidavit filed in support of I.A. No.644 of 2014 as to why the petitioners have not filed the application for amendment before trial, no further objection has been raised by them. The contesting respondents have not stated in their counter affidavit anything about the merits of the amendment sought for by the petitioners in I.A. No.644 of 2014.

5. The second respondent has also filed his counter affidavit to I.A. No.644 of 2014, which has been adopted by 3rd, 4th and 5th respondents, who are all statutory authorities and wings of the Government. In their counter affidavit they have stated that only survey No.97/2 alone belongs to the Government and not 97/1.

6. By order dated 08.08.2014, the learned District Munsif, Namakkal, dismissed I.A. No.644 of 2014 filed by the petitioners /

plaintiffs in O.S. No.1668 of 2004. Aggrieved by the dismissal of I.A. No.644 of 2014 in O.S. No.1668 of 2004, the instant Civil Revision petition has been filed.

7. Heard Mr.T.L. Thirumalaisamy, learned counsel for the petitioners, Mr.A. Manikandan, learned Government Advocate (CS) for respondents 1 to 3 and 5 and Mr.L.Chandrakumar, learned counsel for 7th, 9th and 10th respondents. Even though the remaining respondents have also been served they have not entered appearance in this Civil Revision Petition.

Submissions of learned counsels :

8. The learned counsel for the petitioners drew the attention of this Court to the written statement filed by the contesting respondents viz., 6th to 10th respondents, who are the 6th to 10th defendants in the suit. Referring to the written statement filed in O.S. No.1668 of 2004, the learned counsel for the petitioners would submit that the respondents have never claimed any right in the lands of the plaintiffs viz., S. Nos. No.971A1, 1A2, 1A3, 1B1 and 1B2 and therefore according to him, the amendment application ought to have been allowed as no prejudice will be caused to the contesting respondents.

9. The learned counsel for the petitioners / plaintiffs also drew the attention of this Court to the counter affidavit filed by 2nd to 5th respondents and in particular, he referred to the paragraph, wherein, the said respondents viz., the statutory authorities, who are the wings of the Government, have confirmed that only 97/2 is a Government land where a Water (Odai) channel passes through. Therefore, according to the learned counsel, no prejudice will be caused to the respondents / defendants even, if the amendment is allowed as prayed in I.A. No.644 of 2014, as they pertain to different survey numbers. He also referred to the affidavit filed in support of I.A. No.644 of 2014, wherein the petitioners have specifically pleaded that they came to know about the wrong description of the survey Nos. only after the filing of the proof affidavit by DW1, i.e., during the course of trial. He further drew the attention of this Court to the pleadings made in the affidavit that the amendment even if it is allowed will not change the character of the suit.

10. Per contra, the learned counsel for the contesting respondents viz. Respondents 6 to 10 would submit that the

contesting respondents are concerned only with S.No.97/2, where there is a water channel. According to him, the case of the respondents is that the petitioners, are attempting to block the water channel, which is situated at S No.97/2.

11. The learned counsel for the respondents 1,2, 3 and 5, who are statutory authorities and wings of the Government, would submit that S. No.97/2, belongs to the Government. He drew the attention of this Court to the petitioners / plaintiffs, evidence before the Trial Court, as seen from their proof affidavit, wherein, they have stated that S. No.97/2 also belongs to the petitioners / plaintiffs. For this submission, the learned counsel for the petitioners, fairly conceded that the petitioners are not concerned with 97/2 as admittedly it is a Government land.

Discussion :

12. This Court has perused and examined the impugned order. The Trial Court has dismissed I.A. No.644 of 2014 only on the ground that the petitioners / plaintiffs have not satisfied the Court with

sufficient reasons as to why the amendment application was not filed before commencement of trial. But as observed earlier as seen from the submissions made by the contesting respondents, it can be inferred that the contesting respondents do not have any objection as regards S. No.97/1 as their only objection is with regard to the misuse of S. No.97/2 by the petitioners / plaintiffs. This fact has not been taken note of by the Trial Court under the impugned order. All the respondents in this revision, who are defendants in the suit have objection only in regard to S. No.97/2, but the petitioners have sought for amendment of the plaint only with respect to survey No.97/1. This being the case, the Trial Court by total non application of mind has dismissed I.A. No.644 of 2014, which in the considered view of this Court is an erroneous order.

13. For the foregoing reasons, the impugned order dated 08.08.2014 passed by the Additional District Munsif Court at Namakkal in I.A. No.644 of 2014 in O.S. No.1668 of 2004 is hereby set aside and the Civil Revision Petition is allowed. However, in view of the long pendency of the suit, this Court directs the Trial Court to dispose

of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2019

Note to office :

Issue order copy on or before 29.08.2019

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-speaking Order
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ABDUL QUDDHOSE, J.

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To
The Additional District Munsif,
Namakkal.



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