



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2019

CORAM

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.R.P.[MD]No. 282 of 2019
and C.M.P. [MD] No. 1365 of 2019

Chinnadurai @ Mookaiah : Petitioners/Respondent/Defendant

-Vs-

Subbaiah (Died)

1. Rengasamy @ Rengaiah
2. Manickam
3. Paulraj
4. Muthayee
5. Palaniyammal
6. Thenmozhi
7. Pothumponnu
8. Mathiyalagan
9. Mahesh

:Respondents-1 - 9 / Petitioners-2 to 10
Plaintiffs-2 to 10

PRAYER: Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the Fair and Decreetal Order dated 04.12.2018 in I.A. No.834 of 2018 in O.S. No.64 of 2013, passed by the learned District Munsif, Keeranur and set aside the same.

For Petitioner : Mr. K. P. Narayanakumar

ORDER

This Civil Revision Petition has been filed, to call for the records pertaining to the Fair and Decreetal Order dated 04.12.2018 in I.A. No.834 of 2018 in O.S. No.64 of 2013, passed by the learned District Munsif, Keeranur and set aside the same.

2. The revision petitioner is the defendant and the respondents herein are the plaintiffs in O.S. No.64 of 2013. The respondents herein/plaintiffs have filed a suit in O.S. No.64 of 2013 for permanent injunction. During the pendency of the suit, the plaintiffs have filed a interlocutory application in I.A. No.834 of 2018 in O.S. No. 64 of 2013, under Order 6 Rule 17 and 151 of the Civil Procedure Code, to amend the prayer for the



relief of declaration, recovery possession and also for mandatory injunction and the Trial Court allowed the amendment application. Aggrieved over the order of the Trial Court, the revision petitioner has filed the present Civil Revision Petition.

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3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. In the affidavit filed by the petitioners/plaintiffs in I.A. No. 834 of 2018 in O.S. No.64 of 2013 before the Trial Court, it is stated that the respondents herein/plaintiffs have originally filed a suit for permanent injunction and the said suit is also pending. After filing of the suit only, the came to know the fact through his counsel that only during the examination of the witness that the defendant has encroached the area of north south 20 feet and east west 106 feet. They further stated that the said fact regarding the encroachment of area as mentioned the above has been confirmed by comparing the mahazar i.e., mentioned in the Patta and hence, there is necessary to amend the relief.

5. The petitioner herein/defendant has filed a counter statement in which, it is stated that the reasons stated in the affidavit filed by the petitioners/plaintiffs is not genuine one, regarding the possession of the suit property. Further, it is admitted by the petitioner herein/defendant is that he had constructed even 10 years prior to the suit and hence, the relief of declaration cannot be entertained by way of amendment since it is barred by the limitation. It is further stated that already the plaintiffs have filed an I.A. Nos.505 of 2018 and 633 of 2018 for filing of fresh suit also dismissed by the Trial Court. Hence, they cannot file such application at a very belated stage.

6. The Trial Court has observed that the relief sought for by the plaintiffs and also contentions raised by the defendant in the written statement and also the evidences placed before the Trial Court, the necessity to alter the relief was very much considered by the Trial Court.

7. On perusal of the records and also relief sought for by the respondents herein/plaintiffs that they came to know the encroachment by the petitioner herein/defendant in their property is only after the appointment of Advocate Commissioner and also available evidences. If, prayer is to be amended, there is no prejudice would be caused to the petitioner herein/defendant. Hence, there is no merit in the Civil Revision Petition and it is liable to be dismissed.

8. In the light of the above observations, the Civil Revision Petition is dismissed and the Fair and Decretal Order dated 04.12.2018 in I.A. No.834 of 2018 in O.S. No.64 of 2013, passed by the learned District Munsif, Keeranur, is hereby



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confirmed. No Costs. Consequently, connected Miscellaneous
Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

To

The District Munsif,
Keeranur.

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-47504[F] dated
15/02/2019)

KSA

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