



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2019

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CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.2701 of 2018

and

C.M.P. (MD) No.11827 of 2018

1.M.Paulraj

2.M.Murugesan

3.M.Balasubramanian

4.M.Karunakaran

5.M.Manokaran

6.M.Kannan

... Petitioners

vs.

1.Kulathur Hindu Nadar Uravinmurai Society,
Kulathur Village,
Vilathikulam Taluk,
Thoothukudi District
represented by its President,
M.P.M.P.Kanesa Pandian

2.Kulathur Hindu Nadar Uravinmurai Society,
Kulathur Village,
Vilathikulam Taluk,
Thoothukudi District
represented by its Secretary,
N.Maharajan

... Respondents

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India to set aside the order passed in I.A.No.171 of 2018 in O.S.No.16 of 2015 dated 14.11.2018 on the file of the learned Principal District Munsif, Vilathikulam.

For Petitioners

: Mr.T.A.Ebenezer

For Respondents

: No appearance for R2

Mr.R.J.Karthick for R1

**ORDER**

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.171 of 2018 in O.S.No.16 of 2015 dated 14.11.2018 on the file of the learned Principal District Munsif, Vilathikulam.

2.The petitioners herein contended that the suit in O.S.No.16 of 2015 filed for the relief of easement rights over the III schedule property, which is a part of the II schedule property and the petitioners further contended that the II schedule property is a poramboke land and the same was used by the defendants during the festival occasion and regarding the same, the suit was filed by the plaintiffs, but after filing of the written statement and also the evidence placed before the trial Court, the petitioners came to understand that the II schedule property is not a poramboke land and it belonged to the defendants by way of purchase. Hence, the petitioners sought for withdrawal of the suit regarding the details that was obtained against the II schedule property and hence, the petitioners sought for permission to file the fresh suit, whereas, the defendants/respondents herein contended that already a sketch relating to the field in S.No.475/4 and the said document was also marked during cross-examination. The entries relating to Adangal also filed before the trial Court. In cross-examination, Ex.P1 contended that the portion of the land in S.No.475/4 at the eastern side measuring to an extent of 20 feet was utilized by the petitioners and hence, only by filing the fresh suit, the petitioners herein causing any inconvenience to the defendants and if the case is proceeded in the same way, they may not succeed with the same. Hence, with an ulterior motive, the petition has been filed by the petitioners.

3.On perusal of the plaint, it is observed that the III schedule property has been shown as pathway to an extent of 2 width, 10 feet and four boundaries and is also furnished in S.No.475/1. Hence, the prayer sought in the plaint is for declaring the plaintiffs Easementary Right over the III schedule property, to pass an order of permanent injunction restraining the defendants and their men from interfering with the enjoyment of easementary right over the III schedule property by these plaintiffs in any way and directing the respondents to pay the cost of the suit to the plaintiffs.

4.Now, the case has been posted for cross examination of D.W2 and at this stage, the petitioners filed the petition stating that after the examination of the defendants, they came to know that the III schedule property was purchased by the defendants and hence, in that aspect, they need to withdraw the suit and with regard to the III schedule property lot of process are required and hence, the plaintiffs have permitted to file a fresh suit by



withdrawing the said suit.

5. It is observed that the suit filed in the year 2015 and the relief sought by the plaintiffs is that they have claimed the easementary right in the III schedule property to have an access to the I schedule property. When the right through out the period of filing the suit or during the time of filing the written statement, the plaintiffs were not aware of the title over the same and hence, immediately after filing of the written statement if the petitioners were aware of the fact that the III schedule property was claimed by the defendants as title holders and they could have ascertained the fact that the case is in the stage of examination of the defendants and there is also no documents filed by the petitioners along with the said petition and hence, even if the case is proceeded further in noway, the petitioner will have affected unless and until if they file necessary documents and there is a purpose that the plaintiffs want to withdraw the suit and the same has not been clearly stated.

6. The said petition was dismissed by the trial Court and the trial Court has also given a finding that the new factor that has been stated by the plaintiffs as formal defect is not considered as formal defect and hence, on this aspect, the said petition was not considered by the trial Court.

7. On hearing both sides and also observing the fact that the main case related to the right over the III schedule property and when it was observed by the plaintiffs that after the filing of the written statement, whereas, now the case stands in the stage of conclusion, wherein, the petition cannot be allowed by stating that it is a formal defect. Hence, it does not require any interference and the same is dismissed. However, on request of the petitioners that there is a dispute over the III schedule property and it was not cared by the defendants as there is a change of authorities over the said Sangam and they could not furnish the exact details for the relief claimed in the plaint.

8. In view of the above, there is no merit in this Civil Revision Petition and the order passed in I.A.No.171 of 2018 in O.S.No.16 of 2015 dated 14.11.2018 on the file of the learned Principal District Munsif, Vilathikulam does not require any interference of this Court.

9. This Civil Revision Petition is dismissed accordingly. The petitioners are at liberty to file any evidence and documents relating to the III schedule properties as pathway for proving their case before the learned Principal District Munsif, Vilathikulam, and the learned District Munsif shall also accept the same if it is agreed to law and dispose of the suit in



O.S.No.16 of 2015 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (T&P)

// True Copy //

Sub Assistant Registrar (CS)

To

The Principal District Munsif,
Vilathikulam.

+1 CC to M/s.R.J.KARTHICK, Advocate(SR-52193[F] dated
07/03/2019)

+1 CC to M/s.T.A.EBENEZER, Advocate(SR-52362[F] dated
07/03/2019)

MM

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