



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

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CRP (MD) No.1765 of 2019

and

CMP (MD) No.9028 of 2019

1. V.S.Nagarajan
Dhanalakshmi (died)
2. Murugesan
3. V.S.Mariappan
4. M.Ramakrishnan
5. Maharajothi
6. M.Parameswari
7.Yogasankar ... Revision Petitioners/Petitioners/
Plaintiffs 1,3 to 7

versus

1. A.Devi
2. A.Arumugam
3. The Commissioner,
Periyakulam Municipality,
Thenkarai, Periyakulam,
Theni District.
4. P.Manikandan ... Respondents/Respondents/Defendants

Revision Petition filed under Article 227 of Constitution of India, against the docket order dated 07.09.2019 in unnumbered I.A.SR.No.1368 of 2019 in O.S.No.229 of 2009 on the file of the District Munsif, Periyakulam.

For Revision Petitioners : Mr.R.Suriyanarayanan

ORDER

The revision petitioners are the plaintiffs in O.S.No.229 of 2009. They filed a suit in O.S.No.229 of 2009 before the District Munsif Court, Periyakulam, seeking the following reliefs:

(a) for permanent injunction restraining the defendants 1 and 2 from interfering with their peaceful possession and enjoyment of the suit schedule property.

<https://hcservices.ecourts.gov.in/hcservices/> (b) for mandatory injunction directing defendants 1 and 2 to



remove the construction made in the southern portion of the plaintiffs' property and hand over the same to the plaintiffs.

(b1) for mandatory injunction directing the 4th defendant to remove the construction made in northern portion of the suit schedule property and hand over the same to the plaintiffs.

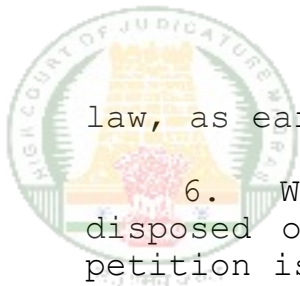
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2. It is the case of the revision petitioners that after filing the suit, they filed an interlocutory application in I.A.No.214 of 2010 before the Court below, seeking appointment of an Advocate Commissioner to note down the physical features of the suit schedule property, wherein, a Commissioner was appointed by allowing the said application on 11.02.2017. The Commissioner also submitted his report on 28.02.2017, which reveals that the first and second defendants encroached the portion of A, B, C, Cl, F, G, H, K as found in the sketch and the 4th defendant encroached the portion of C, D, E, F as found in the sketch. Only after filing the said report, the revision petitioners came to know of the said fact that defendants 1, 2 and 4 have encroached certain portions of the suit schedule property as found in the sketch and therefore, necessity arose for seeking the relief of recovery of possession. Hence, they filed the present interlocutory application before the Court below for amending the prayer for recovery of possession instead of mandatory injunction. However, the said application was returned by the Court below. Challenging the same, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the revision petitioners submitted that the amendment application was returned for the reason that for the proposed amended prayer, Court Fee has already been paid by the revision petitioners, before the order of Court granting permission to amend the prayer. It is submitted that the revision petitioners are ready to strike off the paragraphs with regard to the payment of Court Fee as mentioned in both the affidavit as well as in the application for amendment of prayer and therefore, prays for necessary orders.

4. When the revision petitioners are ready to strike off the paragraphs with regard to the payment of Court Fee as mentioned in both the affidavit as well as in the application for amendment of prayer, this Court is of the view that there would be no impediment for the Court below to number the amendment application, after striking off the said paragraphs.

5. In view of the submission made by the learned counsel appearing for the revision petitioners and recording the said submission, this Court directs the Court below to permit the revision petitioners to strike off the paragraphs with regard to the payment of Court Fee as mentioned in both the affidavit as well as in the application for amendment of prayer and after striking off the said paragraphs, shall number the amendment application and



law, as early as possible.

6. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

OGY

To

The District Munsif,
Periyakulam.

+1 CC to M/s.R. SURIYANARAYANAN, Advocate (SR-91107[F] dated 03/10/2019)

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