

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD).No.2474 of 2013
and M.P.No.1 of 2013

1. C.Ramasamy Gounder
2. R.Duraisamy
3. R.Mahendran
4. R.Surendran

.. Petitioners/Plaintiffs

..Vs..

1. K.Shanmugasundaram
2. C.Kuttiya Gounder
3. K.Kettimuthu
4. R.Sivasubramaniam

..Respondents/Defendants/
Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order passed in I.A.No.1180 of 2012 in O.S.No.693 of 2009 on the file of Principal District Munsif, Erode dated 08.04.2013.

For Petitioners

: Mr.A.Sundaravadhanan

For Respondents

: Mr.Manokaran (R1)

Ms.Meena for

Mr.M.Guruprasad (R2 and R3)

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ORDER

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.1180 of 2012 in O.S.No.693 of 2009 on the file of Principal District Munsif, Erode dated 08.04.2013.

2. The petitioners are the Plaintiffs and the respondents are the defendants in the suit filed in O.S.No.693 of 2009, on the file of District Munsif, Erode for declaration of 'A' Schedule carttrack and for permanent and mandatory injunction. During the pendency of the suit, the petitioners filed an application in I.A.No.1180 of 2012 to amend the plaint based on the Commissioner's report and the said application was dismissed vide order dated 08.04.2013. Challenging the said order the petitioners are before this Court.

4. The learned counsel for the petitioners would submit that they filed a suit in O.S.No.693 of 2009 for declaration, permanent and mandatory injunction with regard encroachment made in the carttrack by the respondents and during the pendency of the suit, the petitioners filed an application for appointment of Advocate Commissioner and the said application was allowed and the Advocate Commissioner was also appointed and after inspecting the suit property he filed a report along with survey plan. The learned counsel for

the petitioners would further submit that the petitioners wanted to amend the schedule of properties in the plaint based on the Commissioner's report and therefore filed the application for amending the plaint. He would further submit that amendment sought for will neither change the character of the suit nor introduce new cause of action and therefore the trial Court would have allowed the application filed to amend the plaint as sought for by the petitioners. Therefore, he prays to set aside the order passed by the trial Court in I.A.No.1180 of 2012.

5. The learned counsel for the first respondent would submit that the petitioners filed a suit for declaration, permanent and mandatory injunction and subsequently he filed the application for appointment of Advocate Commissioner to note down the physical features of the suit properties and the same was allowed. Thereafter, the petitioners filed application before the trial Court to amend the plaint, based on the Commssioner's report. He would further submit that the trial Court rightly dismissed the application. He would further contend that no plaint can be amended based on the Commissioner's report and the Commissioner's report is a piece of evidence and plaint averments have to be substantiated during the trial and therefore, the order passed by the trial Court is correct and same does not warrant interference.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the first respondent. The learned counsel for the second and third respondents adopted the arguments of the learned counsel for the first respondent. Perused the records.

7. Admittedly, the petitioners filed a suit in O.S.No.693 of 2009 against the respondents on the file of District Munsif, Erode and during the pendency of the suit, the petitioners filed an application in I.A.No.1180/2012 to amend the plaint as per the Commissioner report and before filing the application, the petitioners filed application for appointment of Advocate Commissioner and the same was allowed and Advocate Commissioner was appointed to inspect the suit property and to note down the physical features. The Advocate Commissioner after inspecting the suit properties filed a report and based on the Advocate Commissioner's report, the petitioners sought for amendment.

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8. A perusal of the prayer made in the plaint shows that the petitioners/plaintiffs have filed the suit for declaration and also for permanent and mandatory injunction. Though the petitioners have annexed the rough sketch and plan along with the plaint, after the Advocate Commissioner filed

the report, they wanted to amend the rough sketch and plan based on the Advocate Commissioner's report. It is settled proposition of law that the plaintiffs have to prove their case based on the oral and documentary evidence. Further, the Commissioner's report is only a piece of evidence and it is not a conclusive proof. If aggrieved, the parties have to file objections to the Advocate Commissioner's report and Commissioner can be examined during trial. After establishing their rights, if necessary, the petitioners can approach the Court. But without filing any objections they cannot straight away seek the amendment based on the commissioner's report. Therefore, the trial Court has rightly dismissed the application. This Court does not find any perversity in the order passed by the trial Court.

9. In view of the same, this revision is liable to be dismissed. Accordingly the same is dismissed. However, the petitioners are at liberty to file objections to the Commissioner's report. After the trial and recording of evidence and also after examining the Commissioner, if necessary the petitioners can file application at that stage. No costs. Consequently, connected Miscellaneous Petition is closed.

01.09.2020

Index:Yes/No
Internet:Yes/No
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To

1. The Principal District Munsif, Erode
- 2.The Section Officer, V.R. Section, High Court, Madras



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P.VELMURUGAN, J.

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