

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P.(PD) No.2378 of 2016 and  
CMP.No.12299 of 2016

1. Suseela  
2.G.Leela

... Petitioners

vs.

1. Arivazhagan  
2. Selvarani  
3. Palanisamy  
4. Kandasamy  
5. Prakash  
6.Megala

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal Orders dated 20.04.2016 in I.A.No.730 of 2015 in O.S.No.70 of 2008 on the file of Additional District Munsiff Court, Namakkal.

For Petitioners  
For Respondents

: Mr.S.Kalyanaraman  
: Mr.M.Guruprasad (R5 and R6)  
No appearance (R1 to R4)

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ORDER

This Civil Revision Petition has been filed against the order dated 20.04.2016 in I.A.No.730 of 2015 in O.S.No.70 of 2008 on the file of Additional District Munsiff Court, Namakkal.

2. The petitioners herein have filed a suit in O.S.No.70 of 2008 against the defendants seeking for declaration and permanent injunction. Pending suit, an interlocutory application in I.A.No.730 of 2015 has been filed by the

petitioners/plaintiffs under Order 6 Rule 17 of Civil Procedure Code seeking amendment in the plaint on the ground that a portion of the second item of the suit schedule property has been encroached, when the suit is pending and for additional relief viz., recovery of possession. The Court below vide order dated 20.04.2016 had dismissed the interlocutory application by holding that though the plaintiff had knowledge of encroachment in the year 2012 itself, the application for amendment was filed only in the year 2015. Feeling aggrieved by the same, the revision petitioners are before this Court by way of this Civil Revision Petition.

3.The only contention of the learned counsel for the petitioner is that the lower Court was wrong in rejecting the Interlocutory Application and no prejudice is going to be caused to the respondent herein, if the matter is taken up for hearing. In case the suit is decreed by amending the prayer, he will be entitled to the total relief otherwise the purpose of original prayer itself will be defeated.

4. Heard both sides. Perused the materials available on record.

5. A reading of the affidavit would make it very clear that the petitioners, on coming to the site, had found that there was a construction with regard to item No.2 of the scheduled property to the extent of 187 ft length and 43 ft breadth, during the year 2012 itself. Therefore, the trial

Court held that when the petitioners had the knowledge about the encroachment in the year 2012 itself, they, having slept over for more than 3 years, have approached the Court, seeking amendment of the plaint and therefore, the Trial Court rejected the Interlocutory Application on the ground of delay. Though it has been urged by the petitioners that liberty may be given to the respondents herein to canvass about the delay during trial, this Court is not inclined to accept the same for the reason that what cannot be achieved directly cannot be achieved indirectly. The Court could have considered the application, if the same has been filed within the period of limitation as prescribed under the relevant provisions of the Court. In this case, though the petitioners had the knowledge about the encroachment in the year June 2012, without evincing any interest to file interlocutory application immediately, they had filed the amendment application in the year 2015. In view of the same, this Court do not find any perversity or error in the order passed by the Court below.

6. When a private property is encroached by any person, the entire details have got to be stated in the pleadings and the Interlocutory Application, if any, has to be presented well within time without changing the nature of the prayer. When public properties like parks, Roads, OSR, etc., are encroached, the High Court, in a writ petition filed by an individual against another individual person or in a Public Interest Litigation, will decide the issue, as the Court needs to safeguard public properties, which are wholly

**S.VAIDYANATHAN, J**

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meant for public use at large.

7. In view of what is stated herein-above, the Civil Revision Petition is dismissed. It is made clear that since the suit is of the year 2008, the Trial Court is directed to take up the Suit and proceed with the same on a day-to-day basis without adjourning the same beyond five working days at any point of time. It is further made clear that in case either of the parties seeks unnecessary adjournment before the Trial Court, a cost of Rs.2,500/- (Rupees Two Thousand Five Hundred only) shall be imposed on the party seeking adjournment for each and every hearing. No costs. Consequently, connected Miscellaneous Petition is closed.

**12.03.2020**

Index: Yes / No

Internet: Yes / No

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To:

Additional District Munsiff Court, Namakkal.

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