



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.R.P(MD)No.2011 of 2013

and M.P(MD)No.1 of 2013

1.K.Ganesan
2.P.Kaliyammal
3.P.Sasikumar
4.P.Saravanan

... Petitioners/Respondents 7 to 10/
Defendants 7 to 10

Vs.

1.Joint Family represented
By its Manager,
Palaniappan @ Palanisamy
Karuppampalayam Village and Kaspas,
Appipalayam Post,
Karur Taluk

... 1st Respondent/Petitioner/Plaintiff

2.M.Thangavel
3.Thulasimani
4.Vijayalakshmi
5.Kalaiyarasi
6.Gomathi
7.Santhoshini

...Respondents 2 to 7/Respondents 1 to 6/
Defendants 1 to 6

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 19.04.2013 made in I.A.No.784 of 2011 in O.S.No.36 of 2011 on the file of the Additional District Munsif, Karur.

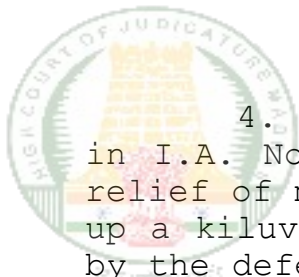
For Petitioner	:	Ms.Priyavadhana for Mr.P.Thiagarajan
For R1	:	Mr.Karthick Ramkumar for Mr.B.Saravanan
For R2 to R9	:	No appearance

O R D E R

The defendants 7 to 10 in O.S.No.36 of 2011 on the file of the Additional District Munsif Court, Karur, aggrieved by the order of the trial court dated 19.04.2013 made in I.A.No.784 of 2011, have come up with this Civil Revision Petition.

2. The suit was filed by the plaintiffs for a declaration that they are entitled to use 15 feet pathway which is the subject matter of the suit and for permanent injunction restraining the defendants from interfering with the user.

3. The suit is resisted by the defendants contending that there is no such pathway or cart-track as alleged by the plaintiff. It is the further contention of the defendants that the plaintiffs are not entitled to any right on cart-track and 15 feet pathway as alleged by the plaintiff.



4. Pending suit, the plaintiffs came out with an application in I.A. No.784 of 2011 seeking to amend the plaint to include the relief of mandatory injunction claiming that the defendants have put up a kiluvaifence on 31.01.2011. The said application was resisted by the defendants contending that since there was no pathway at all, there was no occasion for them to erect the fence as claimed by the plaintiffs that too pending suit. On the above pleadings, the defendants sought for dismissal of the application for amendment.

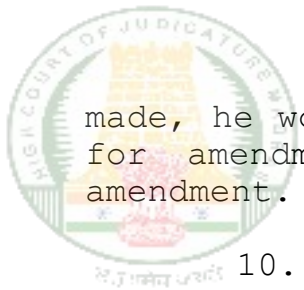
5. The learned Additional District Munsif, Karur, upon consideration of the facts and circumstances, concluded that no prejudice would be caused to the defendants if the amendment is allowed. The learned Additional District Munsif, Karur, has also found that the amendment is the pre-trial amendment, the same has to be considered liberally. Reference was made to the judgments of the Hon'ble Supreme Court of India in **AIR 2001 SC 699 (in Ragu Vs. S.Rayappan)** and **2009(2) SWCC 409 (Vidhyabai Vs. Padmalatha)**. On the above conclusion, the trial court allowed the application for amendment on condition that the plaintiffs shall pay a sum of Rs.1000/- (Rupees one thousand only) as costs to the defendants 7 to 10. Aggrieved, the defendants 7 to 10 have come up with this Civil Revision Petition.

6. I have heard Ms.Priyavadhana, learned counsel for Mr.P.Thiagarajan, learned counsel appearing for the petitioner and Mr.S.Karthick Ramkumar, learned counsel for Mr.B.Saravanan, learned counsel appearing for the first respondent.

7. Ms.Priyavadhana, learned counsel appearing for the petitioner would vehemently contend that the application for amendment is not maintainable as much as the Commissioner, who visited the property on 01.02.2011, has not found the existence of any new fence as claimed in the affidavit filed in support of the amendment application.

8. The learned counsel appearing for the petitioner would also contend that since the very existence of the pathway has been doubted by the Advocate Commissioner in C.M.A.No.12 of 2011, which is an appeal against the order made in injunction application filed under Order 39 Rule 1 and 2 and Section 151 of the Code of Civil Procedure, the trial court was not justified in allowing the application.

9. Contending contra, Mr.R.Karthick Ramkumar, learned counsel appearing on behalf of the first respondent would submit that the court below, while considering the application for amendment, need not go into the truth or otherwise of the amendment sought for. According to him, it is the specific case that after the suit, the defendants have put up a kiluvai fence obstructing the pathway. He would also contend that if it is found that there was 15 feet pathway in existence and the prayer for mandatory injunction was not



made, he would loose the entire suit and therefore, the prayer made for amendment must be considered liberally, being a pre-trial amendment.

10. I have considered the rival submissions.

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11. The lower Appellate Court has made certain observations regarding the affidavit filed in support of the application in I.A.No.784 of 2011. Those observations cannot deter the trial court from going into the question of entitlement of the plaintiffs to seek to amend the pleadings pending suit. As already pointed out, the suit is one for declaration of a easementary right and for permanent injunction. Contending that the defendants have put up a fence, the plaintiffs have come up with the application for amendment seeking mandatory injunction. If the amendment is not allowed, even if the plaintiffs succeed in the suit, the plaintiffs would be rendered remediless. No prejudice would be caused to the defendants, if the amendment is allowed and inasmuch as their claim is that there is no pathway measuring 15 feet as claimed by the plaintiffs. If the defendants succeed in the suit, on the point of non existence of the cart track, whether there is a amendment or not, will not matter. Therefore, I find that prejudice caused to the plaintiffs by dismissing the application for amendment will be much more than prejudice caused to the defendants. In view of the above, I find that the court below is perfectly justified in allowing the amendment application. The court below has taken note of the facts and circumstances and chosen to impose the costs. I do not think that the order allowing the amendment can be said to be materially irregular or is a result of non exercise of jurisdiction vested in the court.

12. In view of the above, this Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM

To,

The Additional District Munsif, Karur.

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-1780[F]

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and M.P(MD)No.1 of 2013

10.01.2020

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