

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.06.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CRP [PD] .No.88/2019
& CMP.No.750/2019

[Video Conferencing]

1.Ponnusamy
2.Venkadachalam
3.Kanniyammal
4.Santhi
5.Sureka
6.Minor Jeyaseelan

Petitioners /
Defendants

Versus

1.Kandasamy
2.Muthusamy

.. Respondents /
Plaintiffs

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 28.09.2018 made in IA.No.311/2018 in OS.No.129/2008 on the file of the District Munsif Court at Paramathi.

For Petitioners : Mr.T.L.Thirumalaisamy

For Respondents ; No appearance

ORDER

- (1) The revision petition has been filed by the defendants in OS.No.129 of 2008, now pending on the file of the Court of District Munsif at Paramathi.
- (2) OS.No.129 of 2008 had been filed by the plaintiffs seeking permanent injunction restraining the defendants from interfering with the usage of a particular cart track/way which has been described in the Schedule to the plaint. On service of summons, the defendants who were at that particular point of time, four in number, entered appearance and as early as 2008, had filed their written statement.
- (3) Mr.T.L.Thirumalaisamy, learned counsel for the petitioners/defendants took the Court through the written statement which had already been filed by the defendants, actually by the 2nd defendant and adopted by the 1st and 3rd defendants. In the said written statement, the 2nd defendant had very specifically stated that in the said cart track, much earlier, a building had been put up by the

plaintiffs and therefore, the plaintiffs cannot seek any relief with respect to usage of the said cart track. Subsequently, during the pendency of the suit, the 3rd defendant, viz., Sellamuthu, unfortunately expired and his legal representatives were brought on record. On their behalf, the 6th defendant filed a written statement. That written statement was filed in the year 2017. In that written statement, again the 6th defendant stated the very same facts as stated in the written statement of the 2nd defendant, namely that much long back, the plaintiffs had put up a building across the cart track and therefore, they cannot seek any relief over the same.

(4) After the written statement filed, issues were framed. Parties were invited to adduce evidence. The plaintiffs accepted such invitation and grazed the witness box and let in evidence in chief and was also cross examined. On the side of the defendants, a witness was also examined in chief and was also partly cross-examined. This indicates that the trial had practically come to a conclusion and there was a very short way to go before final line could be touched.

(5) At that stage, the plaintiffs had filed an application in

IA.No.311/2018 under Order VI Rule 17 of the Code of Civil Procedure seeking to amend the plaint, by amending the relief sought by including the relief of declaratory right over the said cart track. This was opposed by the defendants who pointed out that the said amendment is based on the facts mentioned in the written statement which was originally filed in the year 2008 and later affirmed in the written statement subsequently filed by the 6th defendant who had been impleaded and therefore, it was pointed out that the plaintiffs cannot bring about such an amendment and that the delay in filing such an application will also have to be explained.

- (6) The learned Judge, in the order dated 28.09.2018 which is now under revision, had skirted all these issues. What was stated was that in the written statement filed in the year 2017 by the 6th defendant, this fact had been pointed out which gave a cause for the plaintiffs to amend the plaint and file necessary application in that regard. I am not able to understand that particular reason.
- (7) After trial had commenced, the learned Judge should have given a specific finding as provided under Order VI Rule 17 of CPC that in

spite of diligence, the plaintiffs could not have raised that particular issue before commencement of trial. It is seen from the written statement of the 2nd defendant filed in the year 2008 that there is a specific allegation that the plaintiffs had constructed a building over the cart track much prior to the institution of the suit. Therefore, on the date of institution of the suit, if at all there was a building, then the plaintiffs should have sought necessary reliefs at the time when the suit was filed. It is not the case of the plaintiffs that any obstruction or building over the cart track was constructed pending litigation. When that is not the case of the plaintiffs, then this fact, about the existence on the guise of the building was to the knowledge of the plaintiffs when the suit was filed. Then the plaintiffs will have to explain why they did not seek this particular relief when they instituted the suit. Rather, also a duty is cast upon the learned District Munsif, to examine this particular fact and thereafter, appreciate whether the amendment would have been allowed or not. The learned Judge should go in accordance with the provisions under Order VI Rule 17 and if at all any amendment application is filed

subsequent to the commencement of trial, then a specific finding should be given whether such relief of amendment could not have been sought before the commencement of the trial and the reasons afforded therefor should be examined.

- (8) In this case, no reasons at all had been given. I can very well allow the Revision Petition. But, a perusal of the records show that the respondents/plaintiffs though served, have not appeared before this Court. Since they are the dominant litus before the Trial Court, it would only be appropriate that the order under Revision, is set aside. However, a direction is given to the learned District Munsif at Paramathi, to pass an order in accordance with the provisions, particularly, as enunciated under Order VI Rule 17 of CPC.
- (9) Let the learned District Munsif at Paramathi, apply his/her mind to the facts pleaded and let not the mind wander to extraneous factors.
- (10) The Civil Revision Petition stands **allowed**, however, with a direction to the learned District Munsif at Paramathi, to re-examine the averments made in the affidavit and the counter affidavit in IA.No.311/2018 and pass a considered order. This step is taken by

me only because of plaintiffs have chosen not to appear before this Court. It would be highly inappropriate to pass an order adverse to their interest in their absence. Let the Court below, at the first instance, re-examine the issue and pass appropriate orders.

- (11) Since the suit is pending from the year 2008 and evidence of DW1 has been recorded and witnesses have also been partially cross-examined, I would further direct the learned District Munsif at Paramathi, to dispose of the application in IA.No.311/2018 in accordance with law and thereafter, bestow attention to dispose of the suit itself at least **on or before 31.08.2021**. No costs. Consequently, the connected miscellaneous petition is closed.

30.06.2021

AP
Internet : Yes
To

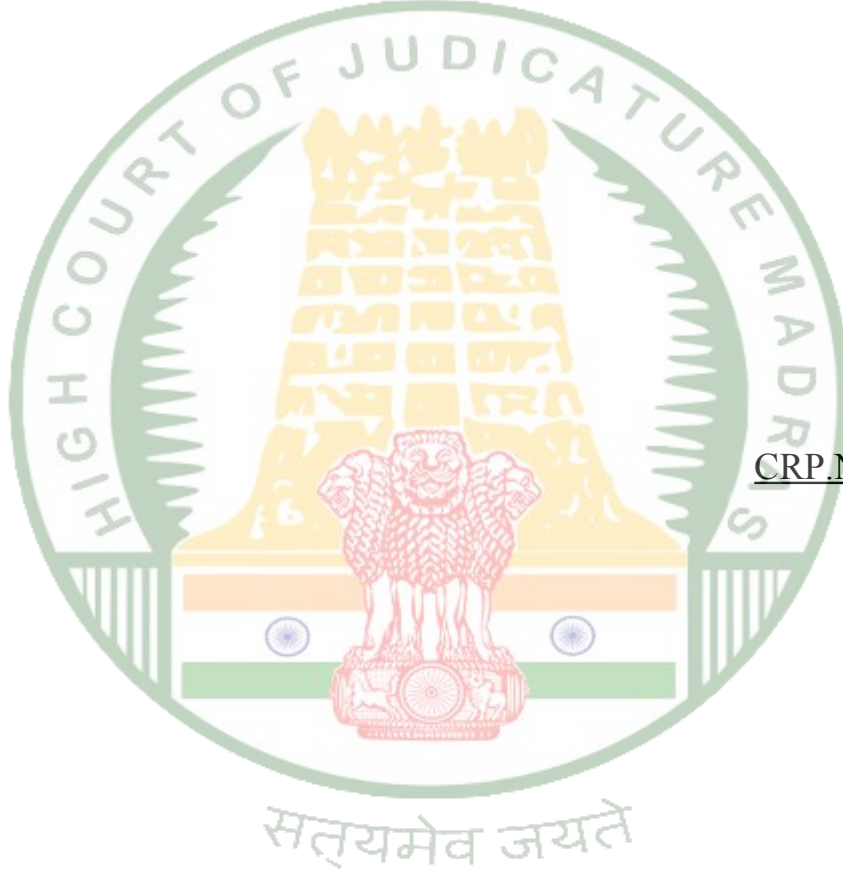
The District Munsif
Paramathi.

WEB COPY

CRP.No.88/2019

C.V.KARTHIKEYAN, J.,

AP



CRP.No.88/2019

30.06.2021

WEB COPY