

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.495 of 2021

and C.M.P. No.4317 of 2021

1.D.Natarajan
2.Kasthuri
3.Kamalanathan

... Petitioners

Vs.

1.K.Ravikumar
2.K.Balarksihnan

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A. No.1 of 2019 in O.S. No.70 of 2009 dated 01.02.2021, on the file of the District Munsif at Ambattur, and allow the CRP.

For Petitioners : Mr. Umapathi Natarajan

For Respondents : Mr. R.Karunakaran

O R D E R

This petition is filed challenging the order passed in I.A. No.1 of 2019 in O.S. No.70 of 2009 by the learned District Munsif, Ambattur, on 01.02.2021.

2. I.A. No.1 of 2019 was filed under Order 6 Rule 17 CPC, for amending

the plaint and to incorporate other particulars mentioned in the petition for amendment. This amendment petition was filed since the advocate commissioner found that the respondents constructed a compound wall and put up iron gate in the middle of 16 ft. passage and prevented access to reach the petitioners' plots. Despite steps being taken by the petitioners to remove this encroachment, the Chennai Corporation Officials and the Revenue Officials have not taken any steps to remove the encroachment. Therefore, the petitioners filed an application in I.A. 1031 of 2017, to amend the plaint to include the prayer for the relief of mandatory injunction. At the time of filing this I.A. No.1031 of 2017, necessary details regarding amendment have been omitted in this petition. Therefore, this petition was withdrawn by the petitioners with a liberty to file a fresh petition. As per the orders of the learned Judge, I.A. No.1 of , is filed seeking amendment. This petition was contested by the respondents. On considering the rival submissions, learned District Munsif, Ambattur, dismissed the petition. Against the said dismissal, this present Civil Revision Petition is preferred.

3. Learned counsel for the petitioners submitted that the advocate commissioner clearly found that the respondents encroached to an extent of 16 ft in public pathway. Therefore, the dismissal of the petition is not correct and hence prayed for setting aside the order of the learned District Munsif,

Ambattur, in I.A. No.1 of 2019.

4. In response, learned counsel for the respondents submitted that the second respondent had filed a petition in W.P. No.18063 of 2018, to measure their property and as per the orders of this Court, the Tahsildar and Head Surveyor measured the property. Thereafter, the respondents constructed a compound wall in their property. The written statement of the respondents was filed on 19.06.2009. The proposed amendment to remove the alleged encroachment was filed in the year 2019. Therefore, it is barred by limitation. The learned District Munsif, Ambattur, has rightly dismissed the petition and hence, the learned counsel for the respondents prayed for sustaining the order passed by the learned District Munsif, Ambattur, in I.A. No.1 of 2019 and for dismissal of this Civil Revision Petition.

5. Considered the rival submissions and perused the records. The issue involved in this case is whether the respondents have constructed the compound wall in their property or in the public pathway as alleged by the petitioners. It is seen from the written statement filed by the respondents that their property was measured by Tahsildar and Head Surveyor and they constructed the compound wall within their property. This is disputed by the petitioners. It is a disputed fact and it needs to be thoroughly examined by examining necessary witnesses and producing documents. If the proposed amendment is not allowed, the right,

if any available, to the petitioners will be lost. In this view of the matter, this Court finds that the proposed amendment can be allowed by permitting the petitioners to effect amendment as prayed in the amendment petition. The question as to whether the compound wall is in the property of the respondents or in the public pathway, has to be decided. Subject to the provision of Indian Limitation Act, the relief claimed by the petitioners can be decided.

6. In this view of the matter, this Civil Revision Petition is allowed and the fair and decreetal order of learned District Munsif, Ambattur, in I.A. No.1 of 2019 in O.S. No.70 of 2009, dated 01.02.2021, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed. After making necessary amendment in the plaint, the learned District Munsif, Ambattur, is directed to give an opportunity to the respondents to file additional written statement, if any, and frame appropriate issues with regard to entitlement of petitioners' claim and on the point of limitation and dispose of the case on merits and in accordance with law, as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.

06.09.2021

Index: Yes / No

Speaking order / Non speaking order

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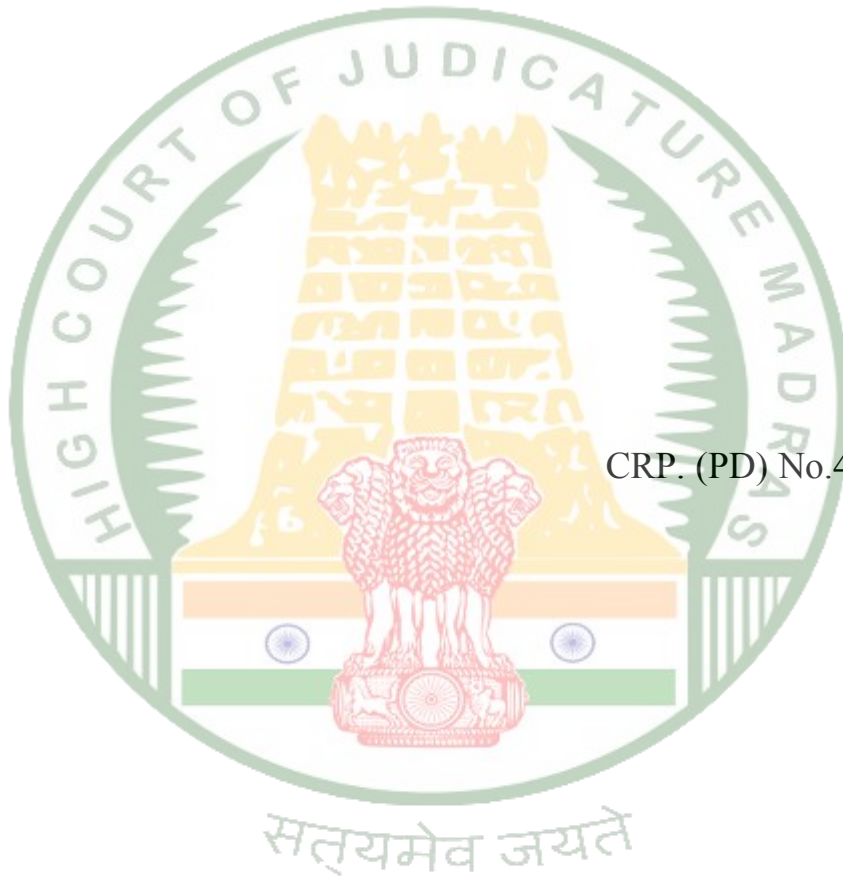
The District Munsif, Ambattur.



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G.CHANDRASEKHARAN. J.,

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