



C.R.P.(PD)No.1723 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1723 of 2013
and M.P.No.1 of 2013

1.Karuppa Padayachi (died)

2.Velayutham

3.Karuppayee

4.Rayammal

5.Pachiammal

6.Kalaiselvi

7.Dhanam

8.Alamelu

9.Mayakannan

(Petitioners 3 to 9 brought on record as
legal heirs of the deceased 1st petitioner viz.,
Karuppa Padayachi vide Court order dated
30.10.2019 made in C.M.P.Nos.4287 and 4288
2018 in C.R.P.(PD)No.1723 of 2013)

.. Petitioners

Vs.

1.Executive Engineer
(O&M)
Tamil Nadu Electricity Board
Kallakurichi Post and Taluk.

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2.The Junior Engineer
(O&M)
Tamil Nadu Electricity Board
Kallakurichi Post and Taluk.

3.Muthusamy (died)

4.Maruthayee

5.Murugan

6.Anjalai

7.Periyanayagam

8.Karuppayee

.. Respondents

(Respondents 4 to 8 brought on record as legal heirs of the deceased 3rd respondent viz., Muthusamy vide Court order dated 02.12.2021 made in C.M.P.Nos.11643, 11657 and 11672 of 2021 in C.R.P.No.1723 of 2013)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 16.11.2012 in I.A.No.1632 of 2012 in O.S.No.460 of 2001 on the file of the III Additional District Munsif Court, (Principal District Munsif Court, In-charge) Kallakurichi.



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For Petitioners : Ms.R.Meenal
For RR1 and 2 : Mrs.J.Hemalatha Gajapathy
R3 : died
For R4 to R8 : No appearance

ORDER

(The matter is heard through “Video-conferencing/ Hybrid mode”)

Civil Revision Petition is filed against the fair and decretal order dated 16.11.2012 in I.A.No.1632 of 2012 in O.S.No.460 of 2001 on the file of the III Additional District Munsif Court, (Principal District Munsif Court, In-charge) Kallakurichi.

2.The petitioners 1 and 2 filed suit in O.S.No.460 of 2001 on the file of the III Additional District Munsif Court, (Principal District Munsif Court, In-charge) Kallakurichi against the respondents 1 to 3 for declaration that the suit property belongs to the plaintiff, permanent injunction restraining the 3rd respondent from interfering with their possession and for mandatory injunction directing the respondents 1 and 2 to disconnect the electricity connection given to the 3rd respondent. The said suit was dismissed. In the appeal filed by the petitioners, additional



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issues were framed by the First Appellate Court and the suit was remanded to the trial Court for fresh trial. After remand, the petitioners 1 and 2 filed I.A.No.1632 of 2012 in O.S.No.460 of 2001 for amendment of S.No.180/18A1 mentioned in the schedule as S.No.180/20.

3. According to the petitioners 1 and 2, after remand, the petitioners 1 and 2 obtained copy of FMB sketch from the Revenue Department and came to know that S.No.180/18A1 has been sub-divided as S.No.180/20. In view of said sub-division, the survey number mentioned in the schedule has to be amended as S.No.180/20. In the written statement filed by 3rd respondent, he did not mention the sub-division and new survey number given to the suit property as S.No.180/20 and prayed for amendment of schedule.

4. The 3rd respondent filed counter affidavit and stated that application for amendment after commencement of trial is not maintainable. The petitioners, who have filed the suit must give correct



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particulars and they cannot blame 3rd respondent for not furnishing survey number after sub-division. The amendment sought for introduces a new subject matter. The suit was remanded for letting in additional evidence. The petitioner without taking any steps for letting in additional evidence filed present I.A. only to drag on the proceedings and prayed for dismissal of the said application.

5.The learned Judge by order dated 16.11.2012, considering averments in the affidavit and counter affidavit, dismissed the application holding that after commencement of trial, amendment cannot be ordered.

6. Against the said fair and decretal order dated 16.11.2012 made in I.A.No.1632 of 2012 in O.S.No.460 of 2001, the petitioners have come out with the present Civil Revision Petition.

7.Pending Civil Revision Petition, the 1st petitioner died, his legal heirs were impleaded as petitioners 3 to 9, the 3rd respondent died and his legal heirs were impleaded as respondents 4 to 8.



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8.The learned counsel appearing for the petitioners reiterated the averments in the affidavit and contended that suit has been remanded for fresh trial on framing additional issues, by the First Appellate Court. Hence amendment sought for is only pre-trial amendment. The order of the learned Judge is not a speaking order which simply states that post trial amendment cannot be ordered. The learned Judge failed to see that new survey number was not known to the petitioners earlier and amendment sought for is only to give correct survey number after sub-division. No new case was set up and only to identify the suit well correctly, the amendment has been sought. The contention of the respondents that petitioners 1 and 2 filed application only to protract the proceedings is not correct and prayed for setting aside the order of the learned Judge.

9.Though notice has been served on the respondents 4 to 8 and their names are printed in the cause list, there is no representation for them either in person or through counsel.



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10. Heard the learned counsel appearing for the petitioners through Video-conferencing/Hybrid mode as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials on record.

11. From the materials on record, it is seen that petitioners 1 and 2 filed suit for declaration, permanent injunction and mandatory injunction in respect of the suit property. They have given survey number of the suit property as S.No.180/18A1. According to the petitioners 1 and 2, after remand by First Appellate Court, they obtained FMB sketch from the Revenue Department and came to know that S.No.180/18A1 was sub-divided and new S.No.180/20 was given. Only after obtaining FMB sketch, they came to know about sub-division and hence they filed present application for amendment. The 3rd respondent who filed counter affidavit, did not deny that suit survey number was sub-divided and new S.No.180/20 was given. The learned Judge dismissed the application on



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the ground that post trial amendment cannot be ordered. The said reasoning of the learned Judge is not correct. As per the proviso to Order VI Rule 17 of C.P.C., after commencement of trial, amendment can be ordered only when parties seeking amendment proves that inspite of due diligence, they could not file application for amendment before commencement of trial. As per this proviso, there is no total bar for amendment of pleadings after commencement of trial. The Court has to consider the reason given by the party for amendment and either order amendment or dismiss the application. In the present case, the petitioners 1 and 2 have come out with present application for amendment stating that they came to know the sub-division only after remand of the suit by the First Appellate Court and after obtaining FMB sketch from the Revenue Department. The amendment sought for is only to amend the new survey number given by the Revenue Department after sub-division. The reason given by the petitioners 1 and 2 is acceptable one. The learned Judge without considering the reason for amendment, simply dismissed the application holding that post trial amendment cannot be



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ordered. The amendment sought for by the petitioners 1 and 2 is to amend the survey number given in the schedule to incorporate the new survey number given by the Revenue Department, which was not denied by the respondents. This amendment does not change cause of action or introduce new case. In view of the above, the order of the learned Judge is liable to be set aside and is hereby set aside. I.A.No.1632 of 2012 in O.S.No.460 of 2001 is allowed.

12.For the above reasons, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

15.12.2021

Index : Yes/No
Internet: Yes/No
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To

III Additional District Munsif
(Principal District Munsif, In-charge)
Kallakurichi.

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V.M.VELUMANI,J.

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