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C.R.P. (PD) .Nos.1020 to 1022 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.1020 to 1022 of 2016

and

C.M.P.No.5688 of 2016

1.Periyathambi

2.Rathinammal

3.Selvan

4.Gandhi

.. Petitioners
[in all cases]

Vs.

Erusa Gounder

.. Respondent
[in C.R.P.(PD).Nos.1020 &
1021 of 2016]

1.Ramasamy

2.Erusa Gounder

.. Respondents
[in C.R.P.(PD).No.1022 of 2016]

Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and final orders dated 13.02.2015 passed in I.A.Nos.285 to 287 of 2014 in O.S.No.384 of 2008 on the file of the I Additional District Munsif Court, Bhavani, Erode District.



In all the cases:

For Petitioner : Mr.S.Lakshmanasamy

For Respondent(s) : No appearance

COMMON ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

These Civil Revision Petitions are filed against the fair and final orders dated 13.02.2015 passed in I.A.Nos.285 to 287 of 2014 in O.S.No.384 of 2008 on the file of the I Additional District Munsif Court, Bhavani, Erode District.

2.The issues involved in all the Civil Revision Petitions are interlinked and hence, these Civil Revision Petitions are disposed of by this common order. The parties are referred to as per their rank in C.R.P.(PD).No.1022 of 2016, for the sake of convenience.

3.The petitioners are defendants in O.S.No.384 of 2008 on the file of the Principal District Munsif Court, Bhavani, Erode District. The 2nd respondent, who is the plaintiff herein filed the said suit against the petitioners for permanent injunction restraining the petitioners from interfering with the 2nd



respondent's usage of pathway and for mandatory injunction to remove the wall constructed by the petitioners. The petitioners filed written statement and are contesting the suit. Trial commenced. Both the 2nd respondent and petitioners let in their evidence and closed their side. The petitioners counsel argued the matter and also filed written arguments. The petitioners filed additional written statement on 31.03.2011. At that stage, the 2nd respondent filed three applications in I.A.Nos.285 to 287 of 2014 to re-open the case, for amendment to include the relief of declaration and to implead one Ramasamy as 5th defendant in the said suit.

4. According to 2nd respondent, in the suit filed by him, Advocate Commissioner was appointed on the application filed by the petitioners. The Advocate Commissioner inspected the suit property and filed a report stating that suit pathway of two feet situated in Survey No.507/7 belongs to petitioners and two feet situated in Survey No.507/2 belongs to one Ramasamy, S/o. Muthuraman @ Kuppu. The petitioners filed I.A.No.252 of 2014 to frame additional issue that suit without relief of declaration is not maintainable. The said I.A.No.252 of 2014 was allowed and additional issue was framed on 21.07.2014. The petitioners in the written arguments also prayed for dismissal of the suit for not impleading the said Ramasamy, S/o. Muthurman @ Kuppu



and suit filed not seeking the relief of declaration. In view of the same, the suit has to be re-opened for amendment of plaint to include the relief of declaration and to implead the said Ramasamy, owner of Survey No.507/2.

5.The petitioners filed counter affidavit and denied all the averments stated in the affidavit and submitted that in the written statement filed on 25.09.2009 itself, it has been stated that suit is not maintainable without seeking the relief of declaration and for not impleading the said Ramasamy, the owner of Survey No.507/2. After commencement of Trial, even during cross examination of 2nd respondent on 07.03.2011, specific questions were put to 2nd respondent that without seeking the relief of declaration and impleading necessary parties, the suit is not maintainable. The Advocate Commissioner inspected the property on 06.06.2010 and filed his report on 10.08.2010. The 2nd respondent has filed the present applications after four years and three months of report of the Advocate Commissioner. When the suit was posted for arguments, the petitioners argued the matter and filed written arguments on 08.10.2014. The 2nd respondent took three adjournments on 13.10.2014, 17.10.2014 and 28.10.2014. After arguments, the learned counsel appearing for the 2nd respondent took number of adjournments for arguing on behalf of the 2nd respondent. After taking adjournments, at a belated stage, the 2nd



respondent has filed the present three applications for re-opening, for amendment and for impleading the said Ramasamy as 5th defendant, which are not maintainable and prayed for dismissal of all the three applications.

6.The learned Judge considering the averments in the affidavit, counter affidavit and judgments relied on by the learned counsel appearing for 2nd respondent, allowed all the three applications by three separate orders.

7.Against the said orders dated 13.02.2015 passed in I.A.Nos.285 to 287 of 2014, the petitioners have come out with the present Civil Revision Petitions.

8.The learned counsel appearing for the petitioners contended that if the orders passed by the learned Judge are allowed to stand, it will cause injustice to the petitioners. The learned Judge failed to note that the 2nd respondent filed three applications only when the suit was posted for further arguments of petitioners. The petitioners have already filed written arguments. The learned Judge failed to consider that amendment is not automatic after commencement of Trial. The claim made by the 2nd respondent is time barred. The learned Judge has committed an error in allowing the impleading petition without

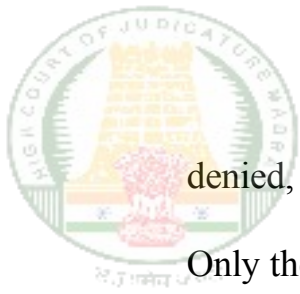


hearing the proposed party. The reason given by the learned Judge for allowing all the three applications are not valid and prayed for setting aside the orders of the learned Judge and allowing the Civil Revision Petitions.

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

10. Heard the learned counsel appearing for the petitioners and perused the entire materials on record.

11. From the materials on record, it is seen that the 2nd respondent has filed suit for permanent and mandatory injunction against the petitioners in respect of pathway described in schedule of the plaint. According to the 2nd respondent, he is the exclusive owner of the suit pathway and petitioners are preventing him to use the said pathway. The petitioners in the written statement denied various averments made by the 2nd respondent in the plaint. In addition to that, they have stated that suit for injunction without seeking the relief of declaration is not maintainable. By taking such a stand, the petitioners are denying the title of the 2nd respondent. When in a suit for injunction, the title is



denied, the plaintiff has to amend the plaint to claim the relief of declaration.

Only then the issues in the said suit can be decided properly and fully. In view of the stand taken by the petitioners, the 2nd respondent has filed an application to amend the plaint to include the relief of declaration. The 2nd respondent has filed all the three applications when the suit was posted for arguments. The learned Judge has considered the contentions of the petitioners that applications are filed at a belated stage, allowed all the three applications on the ground that amendment to include the relief of declaration is necessary to completely adjudicate the issue in the suit. The learned Judge has allowed the applications taking into consideration the rival contentions of the 2nd respondent and petitioners with regard to ownership of pathway. The learned Judge has given valid reason for allowing the application for amendment, even though the same was filed at a belated stage. There is no error in the said order of the learned Judge warranting interference by this Court.

12. Similarly a necessary party to the suit can be impleaded either as plaintiff or defendant at any stage of the suit. As per the report of the Advocate Commissioner, two feet width of suit pathway is situated in Survey No.507/2 belonging to one Ramasamy, S/o. Muthurman @ Kuppu. In view of the same, the said Ramasamy is not only a proper party, but also necessary party to



decide the issue in the suit. Therefore, the learned Judge has allowed the application for re-opening also. The learned Judge has exercised her power conferred on her properly and allowed all the three applications by giving cogent and valid reasons. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

13. For the above reasons, all the Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

10.12.2021

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Index : Yes / No

Internet : Yes / No

To

The learned I Additional District Munsif,
Bhavani,
Erode District.

V.M.VELUMANI, J.

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