



C.R.P. (PD) No. 1237 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1237 of 2019
and C.M.P. No.7955 of 2019

1. Duraisamy
2. Chinnamani @ Sundararaj

...Petitioners

Versus

Nallaiyya Gounder (Died)
Komara Gounder (Died)

1. Raja

Marayee (Died)

2. Thambi @ Palanivel
3. Kandayee
4. Vijaya

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and decretal order passed by the Principal District Munsif Court, Tiruchengode in I.A.No.716 of 2018 in O.S. No.85 of 2005, on 18.12.2018.

For Petitioners : Mr. C.Rajasekaran

For Respondents : No Appearance



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ORDER

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This Civil Revision Petition is directed against the order passed by the Principal District Munsif, Tiruchengode in I.A. No.716 of 2018 in O.S. No.85 of 2005, on 18.12.2018.

2. The revision petitioners are the plaintiffs in O.S. No.85 of 2005 on the file of the Principal District Munsif Court, Tiruchengode. The suit in O.S. No.85 of 2005 was filed for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the property in particular from damaging the standing seasonal crops. The suit is also for permanent injunction restraining the defendants in any way from interfering with the plaintiff's peaceful possession and enjoyment of the suit cart track.

3. During the pendency of the suit, at the instance of the revision petitioners, an Advocate Commissioner was appointed. The Advocate Commissioner filed a report with a plan on 20.04.2005. Thereafter, the revision petitioners filed an application in I.A. No.716 of 2018 to amend the plaint to include the additional prayer for mandatory injunction directing the defendants



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to restore the cart track. The said application was dismissed on the ground that the application is filed to drag on the proceedings. Challenging the order dismissing the petition for amendment, the above revision is filed by plaintiffs.

4. It is to be seen that the report of the Advocate Commissioner which was filed on 20.04.2005 refers to the existence of the cart track as alleged by the revision petitioners. It is admitted that twelve years later, another report was filed by the Advocate Commissioner. Even in the second report, there is reference to a cart track. Therefore, the allegations of the revision petitioners in the affidavit filed in support of the petition that the respondents have destroyed the cart track after the suit was filed, appears to be probable. From the case pleaded by the revision petitioners, this Court is able to see that the amendment was necessitated in view of the subsequent development which was ignored by the lower Court.

5. It is to be pointed out that the revision petitioners though seeks amendment of prayer by introducing a new prayer of mandatory injunction, the petitioners have not amended the relevant paragraph regarding Court fee and valuation. The amendment application is inappropriate since the petitioners have not corrected the plaint to make it proper. Therefore, the order of the



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lower Court dismissing the petition is justified. However, the lower Court ought to have given liberty to the petitioners to amend the plaint regarding Court fee and valuation.

6. In that view of the matter, this Court is not inclined to interfere with the order of the lower Court. However, liberty is given to the petitioner to file a detailed amendment petition by introducing relevant paragraphs regarding Court fee and valuation apart from introducing new prayer within two weeks from the date of receipt of a copy of this order. When an amendment petition is filed with particulars, the lower Court shall consider and allow the same if the suit as per the amendment is properly valued. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Speaking Order / Non-Speaking Order
bkn



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The Principal District Munsif, Tiruchengode.



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S.S.SUNDAR, J .,

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