

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P (PD) No.2502 of 2018

and

CMP.No.15269 of 2018

1. A.K.Chinnasamy
2. C.Chandramohan
3. C.Rajmohan

... Petitioners

Vs.

P.Muthusamy Gounder (died)

1. T.Ramasamy
2. T.Chinnasamy
3. T.Palanisamy
4. G.Annapoorani
5. T.Saraswathi
6. K.Janaki
7. S.Annalakshmi
8. M.Muruganadam
- T.Navaneethalakshmi (died)
9. V.N.Ramasamy
10. P.Gnanasekaran
11. K.K.Thangavel
12. K.Appukutti
13. G.Chandramouleeswaran

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated in I.A.No.754 of 2018 in O.S.No.406 of 2007 dated 24.07.2018 on the file of the District Munsif, Pollachi by allowing the said application and allow this CRP.

For Petitioners : Mr.Silambanan
Senior Counsel for
M/s.Kaavya Silambanan Associates

For Respondents : M/s.S.N.Sumathy for
Mr.V.Anandhamoorthy
(for R-2 to R-8)
: Notice Served (No Appearance)
(for R-1, R-9 to R-13)

ORDER

This Civil Revision Petition is directed against the fair and final order passed in I.A.No.754 of 2018 in O.S.No.406 of 2007 dated 24.07.2018 on the file of the District Munsif, Pollachi, thereby allowing the petition for amendment.

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2. The petitioners are the defendants 6 to 8, the respondents 1 to 3 are the plaintiffs 2 to 4, the respondents 4 to 8 are the legal heirs of the plaintiff 1, the respondents 9 to 12 are the defendants 2 to 5 and the respondent 13 is

the legal heir of the defendant 1 in O.S. No. 406 of 2007 filed for bare injunction. While pending the suit, the Advocate Commissioner was appointed and he had also filed his report as early as on 31.07.2007. Immediately, the respondents 1 to 8 filed a petition for interim mandatory injunction in I.A.No.1485 of 2008 directing the petitioners to remove the barbed wire fence, coconut saplings and obstructions which way laid across the cart track in the petition mentioned property. Though the said Interlocutory Application was dismissed and they filed a Civil Miscellaneous Appeal in C.M.A.No.3 of 2010 and the same was allowed. Aggrieved by the same, the petitioners herein preferred Civil Revision Petition in C.R.P.No.3510 of 2013 and this Court by an order dated 15.12.2017 directed the Court below to dispose the suit in O.S.No.406 of 2007 and O.S.No.644 of 2008 as expeditiously as possible, in any event, not later than two months from the date of receipt of that order and status quo is ordered to be maintained by both the parties till the disposal of the two connected cases. Thereafter, on the death of the first plaintiff and the other defendants, the legal heirs of the deceased/first plaintiff and the other defendants were brought on record. Thereafter, they filed the present petition to amend the prayer to include the prayer of mandatory injunction

to remove the the barbed wire fence, coconut saplings and obstructions which way laid across the cart track in the petition mentioned property.

3. The learned Senior Counsel appearing for the petitioners submitted that the present amendment petition was filed after a period of ten years from the date of Advocate Commissioner's report. Even on the date of Advocate Commissioner's report itself, the respondents 1 to 8 had knowledge about the alleged encroachments by the petitioners. Therefore, they filed a petition after a period of ten years to amend the prayer to include the prayer of mandatory injunction. He further submitted that aggrieved by the order in I.A. No. 1485 of 2008 passed by the trial Court, they preferred Civil Miscellaneous Appeal in C.M.A.No.3 of 2010 and the same was allowed on the file of the Sub Court, Pollachi. Aggrieved by the same, the petitioners preferred a Civil Revision Petition before this Court in C.R.P.No.3510 of 2013 and the same was disposed of with a direction to direct the Court below to dispose of the suit filed by the respondents 1 to 8 and also the suit filed by the petitioners herein in O.S.No.644 of 2008 as expeditiously as possible, in any event, not later than two months from the date of receipt of that order and status quo is ordered to be maintained by

both the parties till the disposal of the two connected cases. After disposal of that Civil Revision Petition, the respondents 1 to 8 come forward and filed the petition for amendment, that too without any justifiable reason. Therefore, after a period of ten years, it cannot be allowed and serious prejudice would be caused to the petitioners.

4. On a perusal of the records, it reveals that immediately after filing the Advocate Commissioner's report, the respondents 1 to 8 filed a petition for interim mandatory injunction to direct the petitioners to remove the barbed wire fence, coconut saplings and obstructions which way laid across the cart track in the petition mentioned property. The said Interlocutory Application was dismissed by an order dated 10.11.2009. Aggrieved by the same, the respondents 1 to 8 preferred Civil Miscellaneous Appeal in C.M.A.No.3 of 2010 on the file of the Sub Court, Pollachi and the same was allowed. As against the said order, the petitioners preferred a Civil Revision Petition before this Court in C.R.P.No.3510 of 2013 and this Court by an order dated 15.12.2017 without going to the merits of the case, directed the Trial Court to dispose the suit in O.S. No. 406 of 2007 filed by the respondents 1 to 8 herein as well as the suit filed by the petitioners in

O.S.No.644 of 2008 as expeditiously as possible, in any event, not later than two months from the date of receipt of that order and status quo is ordered to be maintained by both the parties till the disposal of the two connected cases. Thereafter, the first plaintiff died and therefore, his legal heirs were impleaded and thereafter, they filed a petition to amend the prayer to include the prayer of mandatory injunction. Therefore, there is no question of delay and this Court is not barred by any limitation. There is no absolute rule that in every case when the relief is barred because of limitation, amendment should not be allowed and the discretion in such cases depends on the facts and circumstances of the case and that the jurisdiction to allow amendment being discretionary, the same will have to be exercised in a judicious evaluation of the facts and circumstances.

5. In the case on hand, on the strength of the Advocate Commissioner's report, the respondents 1 to 8 have already filed a petition for interim mandatory injunction. Therefore, it is just and necessary for them to include the prayer of mandatory injunction in the suit.

6. In view of the above discussion, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, this Civil Revision Petition is dismissed. However, the Court below is directed to conduct a joint trial in both the suits in O.S.No.406 of 2007 and O.S.No.644 of 2008 and dispose of the same as directed by this Court in the earlier Civil Revision Petition in C.R.P.No.3510 of 2013. Consequently, the connected Miscellaneous Petition is closed. No costs.

28.06.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The District Munsif, Pollachi.
2. The Section Officer,
V.R. Section, High Court of Madras.

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G.K.ILANTHIRAIYAN,J.

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