



C.R.P.(PD).No.864 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.864 of 2016

C.M.P.No.4798 of 2016

L.Shanthi Devi

.. Petitioner

Vs.

1.A.Selvakumar
2.K.Perumal
3.S.Selvaraj
4.Gandhimathi
5.R.Ramaraj
6.Kamal Basha
7.Amaravathy
8.I.Vijayakumar

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.12.2015 made in I.A.No.104 of 2015 in O.S.No.106 of 2005 on the file of the II Additional Sub Court, Salem.

For Petitioner : Mr.R.Nalliyappan



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ORDER

(The matter is heard through 'video conferencing/hybrid mode')

The Civil Revision Petition is filed against the fair and decreetal order dated 09.12.2015 made in I.A.No.104 of 2015 in O.S.No.106 of 2005 on the file of the II Additional Sub Court, Salem.

2.The petitioner is 7th defendant in O.S.No.106 of 2005 on the file of the II Additional Sub Court, Salem. The respondents 1 and 2 along with one K.Arthanari/1st plaintiff filed suit for declaration and for a direction for possession of encroached portion by the petitioner and other defendants. The respondents 1 and 2 along with the 1st plaintiff filed I.A.No.104 of 2015 to amend the plaint to correct the measurements in the schedule with regard to encroachment by the petitioner and other defendants. According to the respondents 1 and 2 and 1st plaintiff, at the time of filing of the suit, only rough measurements were given in the plaint. In the suit, an Advocate Commissioner was appointed in I.A.No.473 of 2011 to find out the extent illegally occupied and



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construction put up by the petitioner and other defendants. The Advocate Commissioner filed report giving the extent of encroachment made by the petitioner and other defendants. The petitioner has put up illegal construction in the suit property after he purchased the adjacent property from the 3rd defendant and prayed to amend the plaint to include the relief of mandatory injunction to remove the illegal construction put up by the petitioner. The petitioner filed counter affidavit and denied all the averments and submitted that by amendment, the respondents 1 and 2 are introducing new case and the relief of mandatory injunction now sought for by way of an amendment is barred by limitation. The Advocate Commissioner cannot be appointed for collection of evidence and the proposed amendment based on the Commissioner's report is illegal and prayed for dismissal of the application. Pending application, the 1st plaintiff viz., K.Arthanari died. The learned Judge, considering the averments in the affidavit, counter affidavit and nature of relief, allowed the application.



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3. Against the said order dated 09.12.2015 made in I.A.No.104 of 2015 in O.S.No.106 of 2005, the petitioner has come out with the present Civil Revision Petition.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. From the materials on record, it is seen that the respondents 1 and 2 and the deceased K.Arthanari filed suit for declaration and for a direction to the petitioner and other defendants to hand over possession of encroached portion. In the suit, Advocate Commissioner was appointed in I.A.No.473 of 2011. He inspected the suit property and filed report with regard to the details of extent of measurement of encroachment by the petitioner and others. In the report of the Advocate Commissioner, he also stated the extent of construction put up by the petitioner. The respondents 1 and 2 filed present application to amend the plaint to give correct extent of encroachment made by the petitioner and other defendants and construction put up by the petitioner. The



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respondents 1 and 2 also sought for additional prayer to include mandatory injunction, directing the petitioner to remove the construction put up by her and hand over the possession to them. The learned Judge, considering the additional issues framed on 06.07.2012, that “whether the plaintiff is entitled for recovery of possession from the 7th defendant (petitioner)”, held that only on bringing forth the exact extent over which the possession is sought for will result in complete adjudication of the disputes between both parties. Without the proposed amendment, the process of bringing forth the actual extent sought for under the recovery of possession will not pave way for complete adjudication of the disputes. The contention of the petitioner that relief of mandatory injunction to remove the construction is barred by limitation can be decided at the time of trial. As far as the contention of the learned counsel appearing for the petitioner that the Advocate Commissioner cannot be appointed to collect the evidence and based on the report of the Advocate Commissioner, amendment sought for is illegal is concerned, the learned Judge has rightly held that the petitioner cannot raise such an issue in the present application. The learned Judge has considered the



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entire materials and has given reason for allowing the application that, for complete adjudication, the amendment sought for is necessary and relied on the judgment of the Hon'ble Apex Court reported in **2009 (2) SCC 409 [Vidyabai and others Vs. Padmalatha and another]**. The learned Judge has given opportunity to the petitioner to file additional written statement and allowed the application by compensating the petitioner with a cost of Rs.1,500/- for the delay in filing the petition. There is no error or illegality in the order of the learned Judge warranting interference by this Court.

For the above reason, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
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To
The II Additional Subordinate Judge,
Salem.



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V.M.VELUMANI, J.

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