

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2021

PRONOUNCED ON : 25.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(P.D)No.2128 of 2021

and

C.M.P.No.16154 of 2021

1.P.A.Joseph Raj

2.Arokiya Mary

...Petitioners

Vs.

1.M.R.Thomas

2.P.J.Sathish

...Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 03.08.2021 passed in I.A.No.3 of 2019 in O.S.No.104 of 2011, by the learned Additional District Munsif at Tiruvallur, by allowing the Civil Revision Petition.

For Petitioners : Mr.E.Prabu

For Respondents : Mr.G.A.Thiyagarajan for R1

ORDER

This Civil Revision Petition is filed challenging the order dated 03.08.2021 in I.A.No.3 of 2019 in O.S.No.104 of 2011 passed by the learned Additional District Munsif at Tiruvallur.

2.I.A.No.3 of 2019 was filed by the first respondent/plaintiff under Order 6 Rule 17 of C.P.C., for seeking amendment of the plaint as detailed in the petition. This petition was contested by the petitioners. The learned Additional District Munsif, Tiruvallur, on considering the rival submissions, allowed the petition. Aggrieved against the order allowing amendment petition, this Civil Revision Petition is preferred.

3.The learned counsel for the petitioners submitted that the proposed amendment is barred by Order 2 Rule 2 of C.P.C., and limitation. The suit was originally filed for the relief of declaration that B schedule property has a pathway; for permanent injunction restraining the defendants from interfering plaintiff's possession and enjoyment over the B schedule property. Now the respondents wants to include a prayer "for declaration of A schedule mentioned property and recovery of C & D schedule mentioned

property”. Originally there are A & B schedule properties. Now C & D schedule properties are sought to be included. The claim of the respondents that respondents came to know about the alleged encroachment only on 16.02.2019 is not correct. He drew the attention of this Court to 7th para of the plaint to highlight that the respondents knew the encroachment in 2010 and in fact the respondents admitted that he has not taken any steps to assess the encroachment and recovery of the encroached portion on humanitarian ground.

4.In the said circumstances, the present amendment petition filed to show the encroached portion as a separate property and seeking the relief of declaration and recovery of possession cannot be entertained and it is barred by the limitation. However, without considering the case of the petitioners, the learned Additional District Munsif, Tiruvallur, allowed the amendment petition. Against the said order, this Civil Revision Petition is preferred.

5.The learned counsel for the petitioners relied on the judgment

reported in **2009 (10) SCC 84 (Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others)**, for proposition that as to the factors which are necessary for considering the amendment.

“63.On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- 1)Whether the amendment sought is imperative for proper and effective adjudication of the case;*
- 2)Whether the application for amendment is bona fide or mala fide;*
- 3)the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- 4)refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- 5)whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- 6)as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing*

with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive”.

In 2006 (12) SCC 119 (State of Adhra Pradesh Vs. Pioneer Builders), it is observed that,

21.Principles governing amendment of pleadings are well settled. Order 6 Rule 17 C.P.C., deals with the amendment of pleadings and provides that the Court may at any stage of the proceedings allow either party to alter or amend pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. It is trite that though an amendment cannot be claimed as a matter of right under all circumstances, yet the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. It is equally well settled that unless serious injustice or irreparable loss is likely to be equally well settled that unless serious injustice or irreparable loss is likely to be caused to the other side, the court should adopt liberal approach and not a hypertechnical approach, particularly in a case where the other side can be compensated with costs. Dominant object to allow the amendment in the pleadings

liberally is to avoid multiplicity of proceedings”.

6.In response, the learned counsel for the respondents submitted that the proposed amendment does not relate to the encroachment alleged in para 7 of the plaint. That was different encroachment and the respondents has not claimed any relief against that portion of encroachment in the original plaint and even now there is no relief claimed in respect of the encroachment mentioned in para 7 of the plaint. The encroachment now alleged in the amendment petition came to the notice of the respondents only in the year 2019, when the survey was conducted. This is a different encroachment not connected with the encroachment mentioned in para 7 of the plaint. Therefore, the amendment petition was filed for incorporating necessary details and additional prayer. On considering the merits of the respondents case, the learned Additional District Munsif, Tiruvallur, allowed the amendment petition. Therefore, the learned counsel for the respondents prayed for confirming the order of the learned Additional District Munsif, Tiruvallur, and for dismissal of this Civil Revision Petition.

7.Considered the rival submissions and perused the records.

8.It is seen from the submissions made by the counsels for the parties that, counsel for the petitioners claims that the alleged encroachment had taken place in 2010 and the respondents specifically stated that he has not taken any steps with regard to this encroachment. Therefore, it is not open to the respondents to seek any relief in respect of encroachment by way of amendment as it is barred by limitation.

9.The contentions of the learned counsel for the respondents is that the encroachment referred in para 7 in the plaint is different and the encroachment now referred in the amendment petition is a different encroachment and it came to the notice of the respondents only in the year 2019. Therefore, it is necessary to find out whether both the encroachments are same encroachments or different encroachments.

10.In para 7 of the plaint, it is alleged that the “defendants have actually encroached to an extent of 2 feet North South and 30 feet East West on the North West corner of the A schedule property”. In the affidavit filed

in support of the amendment petition, it is claimed by the respondents that an extent of 695sq.meter in Survey No.277 of 2019 as exclusive property. It is 'A' schedule property. The pathway through which he reached A schedule property is shown as B schedule property. The respondents filed I.A.No.420 of 2011 for appointment of Advocate Commissioner to measure the property along with the surveyor. Advocate Commissioner measured the property on 16.02.2019 and report of Advocate Commissioner and Surveyor were filed on 26.06.2019. It is seen from the report that the petitioners encroached two portions mentioned in the sketch and there is a pathway in Survey No.277/18. This encroachment came to the light of the respondents only on 16.02.2019. Therefore, the amendment petition. In view of the rival claim as to whether, the encroached portion was encroached in 2010 as mentioned in para 7 of the plaint or some other portion in A schedule property was encroached at some point of time and it came to the notice of the respondents only in the year 2019, are required to be proved by examining the parties to the suit, relevant witnesses, if necessary, the concerned surveyor. Only if the proposed amendment is allowed, the respondents would get the opportunity of proving their case. If that

opportunity is denied their right if any available to them, would be defeated.

11.In the circumstances of the case, nature of the claim made by each other and relief claimed in the plaint, this Court is of the considered view that the proposed amendment is absolutely necessary for appraising the real issue in controversy between the parties and for rendering substantial justice to the parties. Even in the judgment relied by the learned counsel for the petitioners does not say that the amendment could not be allowed. It is observed that though the amendment cannot be claimed as the matter of right in all the circumstances, the power to allow amendment is wide and can be exercised at any stage of the proceedings and in the interest of justice. This is one such case, where the amendment should be allowed in the interest of justice. Therefore, this court finds no reason to interfere with the order dated 03.08.2021 in I.A.No.3 of 2019 in O.S.No.104 of 2011, passed by the learned Additional District Munsif, Tiruvallur and the order is confirmed.

12.Accordingly, this Civil Revision Petition is dismissed. No

costs. Consequently, connected miscellaneous petition is closed.

Ep

25.10.2021

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No



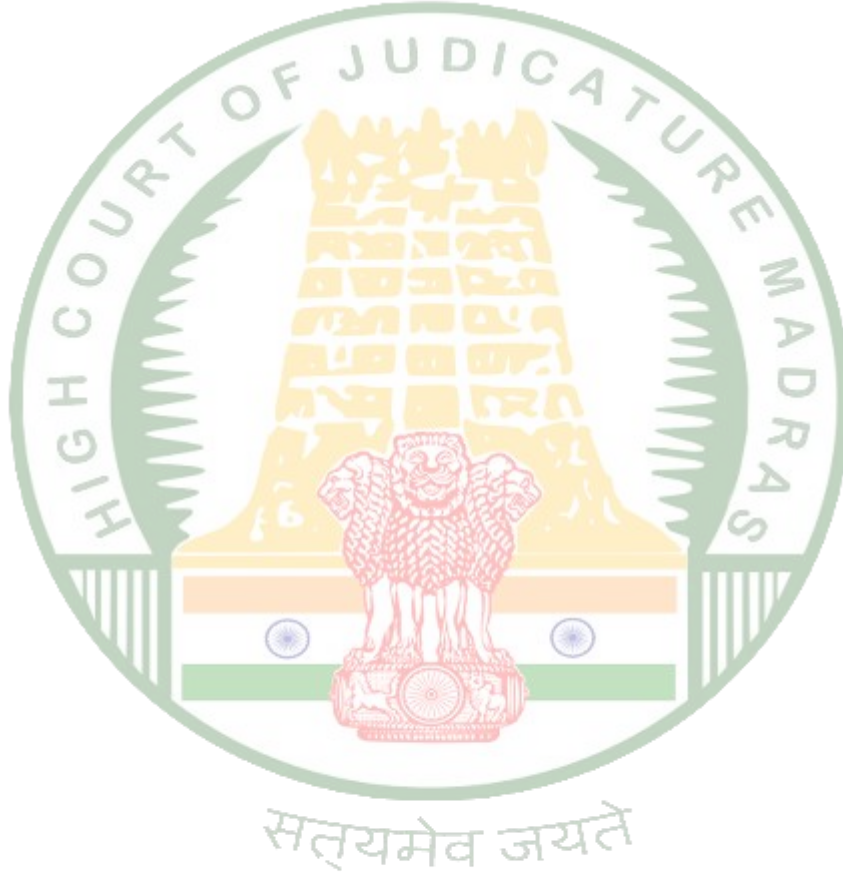
WEB COPY

To

1. The Additional District Munsif,

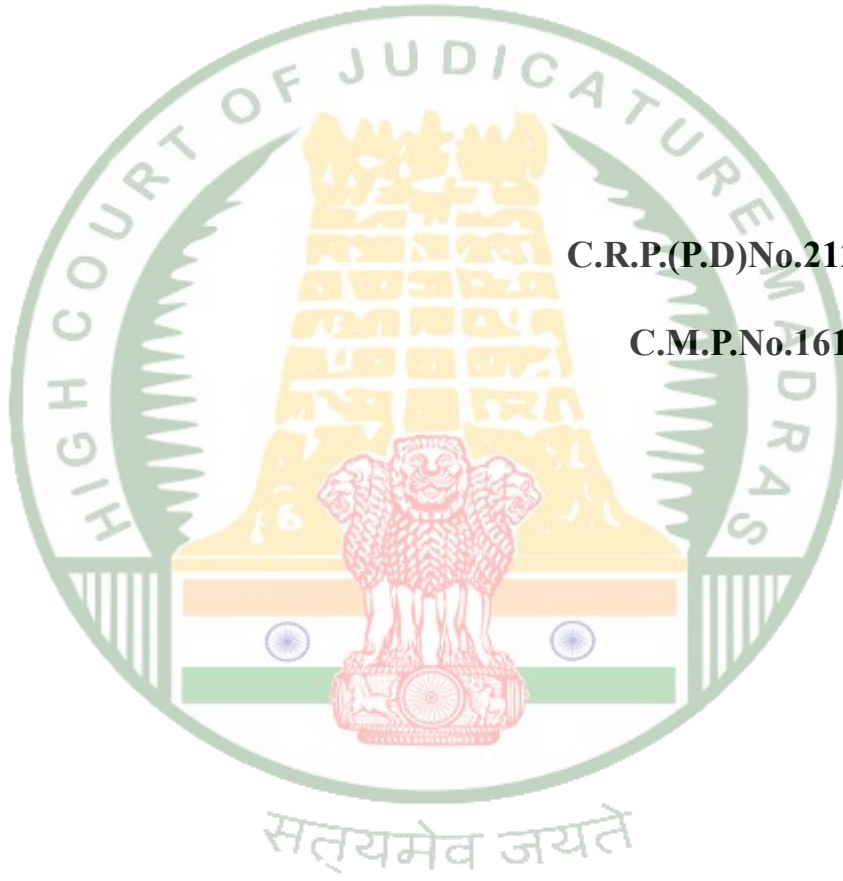
10/12

Tiruvallur.
2. The Section Officer,
VR Section,
High Court of Madras.



WEB COPY

G.CHANDRASEKHARAN.J.



**C.R.P.(P.D)No.2128 of 2021
and
C.M.P.No.16154 of 2021**

WEB COPY

25.10.2021