



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

CRP (MD) No.32 of 2021

and

CMP (MD) .No.372 of 2021

1.Saral @ Dhara

2.Selvi@Mariaselvi

....Petitioners/Petitioners/Plaintiffs

vs.

1.Deva Asirvadha Nadar

2.Anbu Nadar

3.Raj

4.Balagan

5.Inbam

... Respondents/Respondents/Defendants

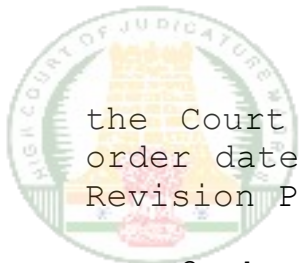
PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and executable order dated 20.02.2020 passed in the application in I.A.No.2 of 2019 in O.S.No.83 of 2013 on the file of the Subordinate Court, Ambasamuthiram and dismiss the same.

For Petitioners : Mr.T.R.Jeyapalam

ORDER

This Civil Revision Petition has been filed to set aside the fair and executable order dated 20.02.2020 passed in the application in I.A.No.2 of 2019 in O.S.No.83 of 2013 on the file of the Subordinate Court, Ambasamuthiram and dismiss the same.

2.The revision petitioners have filed the suit in O.S.No.83 of 2013 on the file of the Subordinate Court, Ambasamuthiram for a decree of partition of half share in the suit property and for separate possession where the respondents also filed written statement. In the chief examination proof affidavit, the respondents had claimed right over a common pathway which according to them belonged to both the petitioners and the respondents. The grievance of the petitioners is, in the written statement filed by the respondents, there is no whisper about the common pathway. Hence, the petitioners filed an amendment application in I.A.No.2 of 2019 before the Subordinate Court, Ambasamuthiram, to amend the plaint to include the relief of permanent injunction that the respondents should not interfere in the peaceful possession and enjoyment of the common pathway to be added as Item No.4 of the suit properties. After hearing the case,



the Court below dismissed the impugned amendment application by order dated 20.02.2020. Aggrieved over the same, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioners would submit that after the oral evidence on the petitioners' side, the respondents filed the chief examination proof affidavit and in the proof affidavit the respondents had mentioned about the pathway which according to the petitioners, the pathway was a common pathway which belong to the petitioners and the respondents. The contention of the petitioners is as in the written statement filed by the respondents, there is no whisper about the common pathway. Hence, the petitioners filed amendment petition to amend the plaint to include the relief of permanent injunction. According to the petitioners, the cause of action for filing the amendment application arose only after the respondents filed their chief examination proof affidavit and therefore, there is no delay on the petitioners' side. Hence, the learned counsel sought before this Court to set aside the order passed in I.A.No.2 of 2019 on the file of the Subordinate Court, Ambasamuthiram and allow this Civil Revision Petition.

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

5. As stated by the learned Judge even as per the contention of the learned counsel for the petitioners only after chief examination proof affidavit filed by the respondents, the petitioners thought it fit to file the amendment application. The revision petitioners have filed the suit in O.S.No.83 of 2013 on the file of the Subordinate Court, Ambasamuthiram for a decree of partition of half share in the suit property and for separate possession where the respondents also filed written statement. The respondents have filed their chief examination proof affidavit as early as on 20.06.2018 and the matter has been pending for nearly 1 ½ years for cross examination and now the petitioners come forward with the present petition to amend the plaint to include 'D' schedule property including the relief of permanent injunction that the respondents should not interfere in the peaceful possession and enjoyment of the common pathway to be added as Item No.4 of the suit properties.

6. The present application seeking to amend the plaint and to include the relief of permanent injunction that the respondents should not interfere in the peaceful possession and enjoyment of the common pathway to be added as Item No.4 of the suit properties will change the entire character of the suit which totally contrary to the earlier prayer of partition of the entire property and such an application has been filed after 1 ½ years that too



after the case was posted for cross examination of the defendants witness. The suit is of the year 2013. Perusal of record shows the extent of properties has not been shown in the schedule mentioned properties and the suit is filed for partition. The amendment if allowed, will change the entire character of the suit and taking note of the petitioners attitude that this amendment application has been filed after 1 ½ years from the date of filing of the respondents/defendants chief examination affidavit and when it was posted for cross examination of the defendants would draw an inference that the petitioners would prolong the case. The learned Judge has rightly dismissed the application and therefore, I am not inclined to interfere with the order.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MSA

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Subordinate Judge,
Ambasamuthiram.

Copy to

The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.T.R.JEYAPALAM, Advocate (SR-1962[F] dated
25/01/2021)

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KM (01.03.2021) 3P 5C

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