



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.01.2021

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P (MD) Nos. 622 and 623 of 2014

In CRP (MD) No. 622 of 2014

1.Meenakshisundaram
2.Chellathai
3.Sundararaj
4.Vijaya
5.Sundaramoorthy

...Petitioners 1 to 5/Respondents/
Respondents

Vs.

1.Thangamuthu Nachiyar
2.Mariappan
3.The Commissioner,
Kovilpatti Municipality,
New Road,
Kovilpatti,
Thoothukudi District.

... Respondents 1 and 2/Petitioners/
Appellants

...3rd Respondent/6th Respondent/
Proposed 6th Respondent

In CRP (MD) No. 623 of 2014

1.Meenakshisundaram
2.Chellathai
3.Sundararaj
4.Vijaya
5.Sundaramoorthy

...Petitioners 1 to 5/Respondents/
Respondents

Vs.

1.Thangamuthu Nachiyar
2.Mariappan

... Respondents 1 and 2/Petitioners/
Appellants

COMMON PRAYER:- Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.Nos.171 and 172 of 2012 in A.S.No.24 of 2010 on the file of the Sub Court, Kovilpatti, Thoothukudi District.

**In CRP(MD) No.622 of 2014:**

For Petitioners : Mr.K.K.Ramakrishnan
For R1 & R2 : Mr.G.Maruthiah
For R3 : Mr.M.Saravanan

In CRP(MD) No.623 of 2014:

For Petitioners : Mr.K.K.Ramakrishnan
For R1 & R2 : Mr.G.Maruthiah

C O M M O N O R D E R

The defendants in O.S.63 of 2008 on the file of the District Munsif Court, Kovilpatti are on revision challenging the orders made by the appellate court in two applications namely, I.A.Nos.171 and 172 of 2012 in A.S.No.24 of 2010.

2. The suit in O.S.No.63 of 2008 was one for permanent injunction restraining the defendants from encroaching or occupying the public pathway shown as the suit item No.2 by way of permanent injunction and for costs. The suit was dismissed by the trial court upon a finding that the plaintiffs have not established that the suit item No.2 was a pathway and it has been encroached upon by the defendants.

3. Aggrieved, the plaintiffs preferred an appeal in A.S.No.24 of 2010. Pending appeal, the appellants sought for appointment of a Commissioner to inspect the suit property to note down the physical features and file a report. The Commissioner visited the property and filed a report stating that there is some encroachment in the public pathway. The order appointing the Commissioner has not been challenged. However, the defendants have raised objections to the report of the Commissioner which are yet to be considered by the Appellate Court.

4. In the interregnum, the plaintiffs/appellants filed two applications seeking impleadment of the Municipality and amendment of the plaint praying for mandatory injunction directing the removal of the encroached portion since the encroachment of the defendants over the public street was found by the Commissioner.

5. These applications were resisted contending that the suit second schedule property is not a public street and therefore, the Commissioner of Kovilpatti Municipality is not a necessary party. As regards the amendment application, the contention was that the prayer for mandatory injunction is time barred and even in the original plaint, the plaintiffs have accepted that the construction was put



up 5 years prior to the filing of the suit. Overruling the objections, the appellate court allowed both the applications.

6. I have heard Mr.K.K.Ramakrishnan, learned counsel appearing for the petitioners and Mr.G.Marthiah, learned counsel appearing for the respondents 1 and 2 in both revisions and Mr.M.Saravanan, learned counsel appearing for the third respondent in C.R.P(MD) No.622 of 2014.

7.Both reliefs namely impleading of the Municipality and amendment of the plaint stem out of the report of the Commissioner. The trial court found that the plaintiffs have not established that the suit second schedule property is a pathway. The Commissioner's report filed by the Advocate Commissioner would show that the suit schedule No.2 is a public pathway and there has been an encroachment over the same. The prayer to implead the Commissioner of the Municipality and to amend the plaint including the prayer for mandatory injunction are consequential upon the report of the Commissioner. Therefore, the lower appellate court cannot be faulted for allowing the said applications. However, it is made clear that it will be open to the defendants to raise the question of limitation in so far as the prayer for mandatory injunction is concerned. The appellate court shall consider the same without being influenced by any of the observations made in this order or in the orders impugned in these revisions. Other than protecting the right of the defendants to raise issue of limitation, I do not think that the order of the appellate court needs interference. Therefore I am not inclined to interfere with the order of the lower appellate court. However, it is made clear that the appellate court will consider the objections raised by the defendants to the Commissioner's report independently while deciding the appeal.

8. With the above observations, these revisions are dismissed. No costs.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

To:

1.The Sub Court, Kovilpatti,
Thoothukudi District.



2.The District Munsiff
Kovilpatti.

3.The Section Officer(2 copies)
VR Section
High Court of Madras
Madurai Bench.

+1 CC to Mr.M.SARAVANAN, Advocate (SR-903[F] dated 18/01/2021)

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11.01.2021

VB (16.02.2021) 4P 6C