

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	21.12.2020
DELIVERED ON	18.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI**C.R.P. (MD) No. 2666 of 2015 (NPD)****and M.P. (MD) No.1 of 2015**

1. Ponnaiah
2. Alagar
3. Perumal
4. Arumugam

... Petitioners/Respondents/Defendants

vs.

1. Vellaithai
2. Pandi

... Respondents/Petitioners/Plaintiffs

PRAYER: Petition filed under Article 227 of Constitution of India, to set aside the order dated, 05.11.2015 in I.A.No.123 of 2014 in O.S. No.48 of 2012, on the file of the District Munsif Cum Judicial Magistrate, Natham and allow the present Civil Revision Petition.

For Petitioners : Mr.N. Rahamadullah
For Respondents : No Appearance

O R D E R

The Civil Revision Petition has been filed to set aside the order dated, 05.11.2015 in I.A.No.123 of 2014 in O.S. No.48 of 2012, on the file of the District Munsif Cum Judicial Magistrate, Natham.

2. Heard the learned counsel appearing for the revision petitioners and perused the material documents available on record.

3. The respondents herein/plaintiffs have filed a suit in O.S. No 48 of 2012 on the file of the District Munsif Cum Judicial Magistrate Court, Natham, for permanent injunction. During the pendency of the suit in O.S. No. 48 of 2012, the revision petitioners herein filed a petition in I.A. No. 123 of 2014 in O.S. No. 48 of 2012 under Order 6 Rule 17 and Section 151 of CPC., to amend the plaint and the same was allowed on 05.11.2015 against the revision petitioners herein. Against the said order, dated 05.11.2015 the instant Civil Revision Petition has been filed.

4. The learned counsel appearing for the revision petitioner submitted that the Court below has allowed the application mechanically without considering the contention of the petitioners. He further submitted that the Court below ought to have dismissed the application for amendment of plaint since the respondents themselves stated in the affidavit that the third petitioner has



made a construction immediately after the western side of the suit property. He further submitted that the Court below ought to have dismissed the application for the reason that the present cause of action is differs from the original cause of action.

5. The respondents herein/petitioners/plaintiffs have filed a petition in I.A. No. 123 of 2014 under Order 6 Rule 17 to amend the plaint. The respondents/plaintiffs have filed a suit for permanent injunction. Thereafter, they have filed a amendment petition to amend the prayer for declaration and recovery of possession. The I.A. No. 123 of 2014 was allowed on 05.11.2015 and against the same the revision petition has been filed.

6. It is stated in the affidavit filed by the respondents herein/plaintiffs that during the pendency of the suit, the defendants have encroached the property. Whether the property is belonged to the plaintiffs and whether it was encroached by the defendants during the pendency of the suit will be decided only after full trial. The revision petitioners have stated in the Counter filed before the Court below that the cause of action of the suit is differ. Hence, the plaintiff cannot file the amendment petition.

7. The cause of action is during pendency of suit, so it is continuous one. Therefore, amendment of plaint is necessary. Since the title of plaintiffs is denied, declaration is also necessary and hence, the learned District Munsif cum Judicial Magistrate, Natham has rightly allowed the I.A. No.123 of 2014 in O.S. No.48 of 2012. This Court has no valid reason to interfere with the findings of the learned District Munsif cum Judicial Magistrate, Natham.

8. In the result, the Civil Revision Petition stands dismissed. The order dated, 05.11.2015 in I.A.No.123 of 2014 in O.S. No.48 of 2012, passed by the learned District Munsif Cum Judicial Magistrate, Natham is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

<https://hcservices.ecourts.gov.in/hcservices/>

The District Munsif Cum Judicial Magistrate,
Natham



copy to

The Section Officer, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P. (MD) No. 2666 of 2015 (NPD)
18.01.2021

VB (03.02.2021) 3P 4C