



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(PD) (MD)No.1767 of 2021

and

C.M.P(MD) No.9426 of 2021

WEB COPY

1.Roselet
2.Thanil Raj

... Petitioners / Petitioners /
Plaintiffs

Vs.

1.Mariadhas
2.David Dhas

... Respondents / Respondents /
Defendants

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 17.09.2021 in unnumbered I.A.No. of 2021 in O.S.No.260 of 2015, C.F.No.1954 of 2021 on the file of the learned Additional District Munsif, Padmanabhapuram.

For Petitioner : Mr.C.Kishore

ORDER

The above petition is filed by the petitioners/plaintiffs challenging the order passed by the Additional District Munsif, Padmanabhapuram, in an unnumbered I.A C.F.No.1954 of 2021 in O.S.No.260 of 2015, in and by which, the learned Additional District Munsif has dismissed the amendment application filed by the petitioners without even numbering the said application.

2.The brief facts in respect of the above civil revision petition are as follows:-

(i)The plaintiffs had filed a suit in O.S.No.260 of 2015 on the file of the Additional District Munsif, Padmanabhapuram, for a permanent injunction restraining the defendants, their men and agents from trespassing into the suit schedule property or demolishing the southern compound wall of the plaintiffs and the first defendant by cutting and removing any standing trees in the scheduled property or committing any other access way. In the schedule of property, the plaintiffs had described the extent as 10 cents. The specific case of the plaintiffs is that the suit property is comprised within a compound wall on all sides and the compound wall is also very old. The plaintiffs would contend that the defendants, who have no right to the property and whose property is situated to the south of the suit schedule property, were attempting to demolish the compound wall and trespass into



the suit property. Therefore, the suit.

(ii)The respondents/defendants would stake a claim to three cents of vacant site situated on the southern portion of the plaintiffs' house and north of the first defendant's house, besides raising other defences.

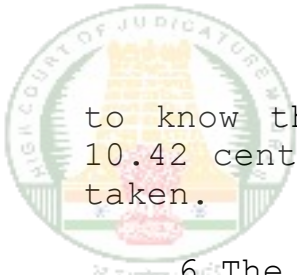
(iii)Pending suit, an Advocate Commissioner was appointed and a detailed warrant of commission was issued to him. The Advocate Commissioner after measuring the suit property had opined that the property stated within the points ABCDA (Within the compound wall) measures an extent of 10.42 cents. In the light of the report of the Commissioner, the petitioners had come forward to file the impugned application seeking to amend the plaint only with reference to the area of the scheduled property to bring it in line with the Commissioner's report i.e., the plaintiffs sought to substitute the area of 10 cents with an area of 10.42 cents. The reason for seeking the above amendment was only on account of the measurement given in the Commissioner's report and plan. The said application was filed on 04.09.2021 in I.A.SR.No.1954 of 2021.

(iv)The Additional District Munsif, Padmanabhapuram, without numbering the said application dismissed the petition on the ground that the plaintiffs' claim for an additional extent of 0.42 cents, is not supported by the documents. Challenging the said order, the petitioners are before this Court.

3.The learned counsel appearing on behalf of the petitioners would submit that the reason for seeking the amendment was only on account of the measurement given by the Commissioner in his plan and report. That apart the extent is only within the compound wall around the suit property. He would further submit the Court ought to have numbered the application and has erred in dismissing the same at the very outset.

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

5.The petitioners have come forward with the case that the suit schedule property which is enclosed by the compound wall of all sides, measured to an extent of 10 cents. The Advocate Commissioner inspected the property and measuring the same, however, found that the extent within the four walls was an extent of 10.42 cents and not 10 cents. The petitioners case is that her mother-in-law, who had purchased the property in the Malayalam Era 1119 (1944), had constructed the compound wall around the property and it is this property that she had settled on her son under a gift deed dated 27.12.1980. It is only, after the Advocate Commissioner has measured the property, the petitioners have come



to know that the total extent within the compound wall measures 10.42 cents and not 10 cents. Therefore, the application has been taken.

6. The learned Additional District Munsif, Padmanabhapuram, has erred in deciding the petition on merits without even numbering the same and hearing the other side as well. The order suffers from an irregularity and therefore, the order dated 17.09.2021 in I.A. C.F.No.1954 of 2021 in O.S.No.260 of 2015 on the file of the learned Additional District Munsif, Padmanabhapuram, is set aside. Accordingly, this Civil Revision Petition is allowed. The learned Additional District Munsif, Padmanabhapuram, is directed to number the I.A C.F.No.1954 of 2021 in O.S.No.260 of 2015 and dispose of the same within one month from the date of receipt of a copy of this order, after hearing both parties. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Additional District Munsif,
Padmanabhapuram.

+1 CC to M/s.C. KISHORE, Advocate (SR-34924[F] dated 18/11/2021)

C.R.P (PD) (MD) No.1767 of 2021
16.11.2021

NA(CO)

SB(09.12.2021) 3P 3C