



C.R.P.(PD) No.955/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **30.06.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P.(PD)No. 955 of 2022

and

CMP.No.4923 of 2022

1.Saraswathi

2.Vengatesan

... Revision Petitioners

Vs.

Renathus

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 13.12.2021 in I.A.No.1379 of 2018 in O.S.No.329 of 2015 on the file of the District Munsif Court, Omalur, Salem District.

For Petitioners : Mr.D.Sivakumar

For Respondent : Mr.G.Suryanarayanan

ORDER

This Civil Revision Petition has been preferred challenging the order dated 13.02.2021 passed by the learned District Munsif, Omalur, Salem District made in I.A.NO.1379 of 2018 in OS.No.329 of 2015.



WEB COPY

2. The petitioners are the defendants and the respondent/plaintiff has filed this suit for the relief of declaration and permanent Injunction. During the pendency of the suit, a Commissioner was appointed to visit the suit property and to file a report; after the report was filed, an amendment petition was filed to amend the suit and the same was allowed. Aggrieved over that the defendants have preferred this Revision petition.

3. Heard the submissions made by the learned counsels on either side and perused the material available on record.

4. The learned counsel for the revision petitioners submitted that in the report of the Commissioner, he has stated about some encroachment of 12 cents in the 'B' schedule property; in the said report, the objection of the defendants were also filed, even before testing the correctness of the Commissioner's report by making due enquiry the plaintiffs was allowed to make amendment of his claim from 8 cents to 12 cents, basing on the report of the Commissioner.



WEB COPY

5. According to the learned counsel for the petitioner this amendment is a hasty and premature amendment and the learned trial Judge ought not have allowed it.

6. The learned counsel for the respondent submitted that the amendment is only a pretrial amendment and the question of entitlement is the matter in issue for trial.

7. No doubt the amendment petition has been filed consequent to the Commissioner's report. In the report of the Commissioner 12 cents was mentioned as encroached portion despite the claim was made for 8 cents in the suit. Having read the Commissioner's report, the respondent/ plaintiff has filed the petition for amendment. He had the reason for seeking amendment because of the Commissioner's report. The learned trial Judge thought it fit to allow the amendment petition. Just because the amendment petition is allowed and the suit is amended that will not amount to granting relief in respect of entire 12 cents, even before the claim is proved before the Court.

8. The learned Trial Judge is correct in holding that the amendment is



C.R.P.(PD) No.955/20__

a pretrial amendment and about which rowing enquiry is not needed at the time of enquiring the amendment petition. Hence, I find no factual or legal infirmity for interference.

Thus, the Civil Revision Petition stands **dismissed**. The order of the learned District Munsif, Omalur, Salem District made in I.A.No.1379 of 2018 in OS.No.329 of 2019 is confirmed. No costs. Consequently the connected civil Miscellaneous petition is also closed.

30.06.2022

Index : Yes/No
Speaking Order : Yes / No
jrs



C.R.P.(PD) No.955/20__

To

WEB COPY

1. The District Munsif, Omalur, Salem District
2. The Section Officer,
VR Section, Madras High Court,
Chennai.



WEB COPY



C.R.P.(PD) No.955/20__

R.N.MANJULA, J.,

jrs

**C.R.P.(PD)No. 955 of 2022
and
CMP.No.4923 of 2022**

30.06.2022