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C.R.P.No.1947 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1947 of 2019

and

CMP.No.12750 of 2019

R.Madhvakannan

....

Petitioner

Vs

Thillaiyadi

Grama Podhu Nala Sangam

Rep by its President

Jagadeesan

Oor Street, Thillaiyadi,

Tharangambadi Taluk

....

Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 01.04.2019 passed in I.A.No.404 of 2019 in O.S.No.188 of 2014 on the file of the District Munsif Court, Sirkazhi.

For Petitioner : Mr.T.Ananthasekar

For Respondent : Mr.M.Arikarasudan
for Mr.B.Harikrishnan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 01.04.2019 passed in I.A.No.404 of 2019 in



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O.S.No.188 of 2014 on the file of the District Munsif Court, Sirkazhi,
thereby dismissing the petition seeking amendment of plaint.

2. The revision petitioner is the plaintiff. He filed a suit for declaration and mandatory injunction. The case of the plaintiff is that the respondent is interfering with the common pathway situated in the 'B' schedule property and had also put up construction in the 'B' schedule property. Pending suit, the petitioner filed an application for amendment of plaint. An Advocate Commissioner was appointed and he was directed to inspect the suit property and measure the same with the help of the surveyor and file a report. Accordingly, the Advocate Commissioner measured the suit property, with the help of the surveyor and, filed his report on 29.06.2017. As per the said report, the respondent occupied the portion of the property comprised in Survey No.520/3B and had put up a compound wall.

3. After commencement of trial, the petitioner filed an application on 21.03.2019 and sought for an amendment in accordance with the Advocate Commissioner's report. However, the Court below dismissed the same on the ground that the petitioner failed to state any



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valid reason for the delay in taking any action to correct the 'B' Schedule property. After commencement of trial, the amendment can be allowed only if there is good cause for the amendment. But the petitioner has not given any valid reason for amending the plaint before trial.

4. Admittedly, the Advocate Commissioner filed his report on 29.06.2017. Thereafter, the Trial was commenced on 18.09.2018. Whereas, the petitioner filed an application seeking amendment as per the Advocate Commissioner's report only on 21.03.2019. Admittedly, the petitioner filed a petition seeking amendment and also failed to prove that he could not file the petition in time and he failed to state any valid reason. Hence, the Trial Court rightly dismissed the petition.

5. In view of the above, this Court finds no infirmity or illegality in the order dated 01.04.2019 passed in I.A.No.404 of 2019 in O.S.No.188 of 2014 on the file of the District Munsif Court, Sirkazhi. (The suit was re-numbered as O.S.No.142 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Tharangambadi). However, the District Munsif-cum-Judicial Magistrate, Tharangambadi is directed to consider the Advocate Commissioner's report along with the surveyor report and considered the fact, while disposing of the suit.



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6. In the result, this Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

12.12.2022

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To

1. The District Munsif Court, Sirkazhi.
2. The District Munsif-cum-Judicial Magistrate,
Tharangambadi.



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G.K.ILANTHIRAIYAN, J.

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