



CRP(PD)No.2668 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP(PD)No.2668 of 2021

and

CMP.No.19654 of 2021

S.N.Sengottaiyan
Represent by his power of
Attorney agent S.K.S.Saravanan
(in the capacity of power agent of
Plaintiff S.N.Sengottaiyan),
S/o.K.K.Sivaprakasam,
Residing at D.No.78, Balamurugan Illam,
Malaikavalar Koil Street,
Trichengode Town & Post,
Trichengode Taluk, Namakkal District.

... Petitioner

Vs

1.The President of Panchayat,
87, Goundampalayam Panchayat,
Kumaramangalam Post,
Trichengode Taluk,
Namakkal District.

2.The Block Development Officer,
Elachipalayam Post,

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Trichengode Taluk,
Namakkal District.

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3.The District Collector,
Office of Collectorate,
Namakkal.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and decreetal order dated 25.08.2021 passed in I.A.No.02 of 2020 in O.S.No.72 of 2015 on the file of Additional District Munsif Court, Trichengode.

For Petitioner :Mr.R.Marudhachalamurthy

For Respondents :Mr.M.Bindran,
Additional Government Pleader

ORDER

Aggrieved by the order dismissing the application for amendment, the plaintiff is on revision.

2.The plaintiff sued for a mandatory injunction directing the defendants to dismantle the construction made in the suit property measuring 111¼ sq. ft. and 173 sq. ft. in the 30 feet common lane, permanent injunction restraining the defendants for putting up any further



construction of the suit property and for costs. The defendants would resist the suit contending that the construction has been put up in the property classified as Village Natham and therefore there is no encroachment. A Commissioner was appointed and he filed a report and plan. The Commissioner found that there is an encroachment of about 41 sq. ft. in the plaintiff's property and an encroachment of 10 ft. north-south over the common lane. The Commissioner's report was filed on 16.08.2018. Thereafter, PW1 was examined and after the examination of PW1, the above application for amendment was sought to be filed. The trial Court dismissed the application on the ground that it is delayed and there is a discrepancy between the surveyor plan and the Commissioner's report and therefore an amendment of plaint based on the Commissioner's report cannot be granted.

3.Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner would contend that the plaintiff is seeking only reduction of the extent of encroachment as found by the Commissioner and therefore, no prejudice would be caused to the respondents by allowing the amendment.

4.Mr.M.Bindran, learned Additional Government Pleader appearing for the respondents would submit that the trial Court was justified



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and dismissing the application on the ground of delay and on the ground that there is a discrepancy between the Commissioner's report and the surveyor plan.

5.I am unable to agree with the contentions of the learned counsel for the petitioner. In my considered opinion, the very prayer for amendment is unnecessary. The plaintiff has sought for a mandatory injunction for removal of encroachment, if the Court ultimately finds that the extent of encroachment is lesser than what the plaintiff had claimed, the Court can grant a decree for that lesser extent. It is not assist the Court is powerless to grant a decree for the lesser extent, which is found to be actually encroached upon. Further, as rightly pointed out by the trial Court, there is a discrepancy between the Commissioner's report and the surveyor plan and the correctness of both the Commissioner's report as well as the surveyor plan will have to be decided only after completion of trial and therefore, the amendment of the plaint at this stage cannot be granted.

6.In fact, no prejudice would be caused to the plaintiff by dismissal of the application. If the Court finds that the extent of encroachment is lesser, it can always mould the relief and grant a decree to



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the plaintiff. Hence, this revision fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.02.2022

vs

Index: No

Speaking order

To:

1.The Additional District Munsif Court,
Trichengode.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

VS

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