



CRP(PD).No.2918 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

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and

C.M.P.No.18906 of 2019

Madhammal

.. Petitioner

Vs

- 1.Sitrarasu,
Former Panchayat President,
Presently Contractor,
Setrapatti Post and Village,
Harur Taluk, Dharmapuri District.
- 2.The President,
Morappur Panchayat,
Harur Taluk, Dharmapuri District.
- 3.Block Development Officer,
Morappur Panchayat,
Harur Taluk, Dharmapuri District.
- 4.Project Office Engineer,
Block Development Office, Morappur,
Harur Taluk, Dharmapuri District.
- 5.The District Collector,
Collectorate, Dharmapuri District.



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6.Mani
7.Kaliammal
8.Karuppumani
9.Santhi
10.Sathasivam
11.Ammu

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 08.07.2019 passed in I.A.No.744 of 2018 in O.S.No.189 of 2013 by the learned District Munisif Court, Harur and allow the said I.A. Filed by the petitioner.

For Petitioner : Mr.Arun Anbumani

For Respondents : Mrs.P.Vijaya Devi, for R2 to R5
Government Advocate
No Appearance for R1, R6 to R11

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.744 of 2018 in O.S.No.189 of 2013. The plaintiff preferred this revision.

2. Originally the plaintiff filed the suit in O.S.No.189 of 2013 for the relief of permanent injunction against an individual and revenue



officials in respect of the suit property in S.No.13/ 1 measuring 0.07 ½ cent pathway. The said suit was contested by contractor and revenue officials by filing written statement. The trial was commenced and witnesses P.W.1 and P.W.2 were examined. At the time of examination of DW.1, the plaintiff filed I.A.No.744 of 2018 seeking amendment under Order 6 Rule 17, more particularly with regard to adding the prayer for mandatory injunction with consequential pleadings. The said application was contested by 6th defendant, and on hearing both sides the trial Judge held that the plaintiff has not chosen to file with regard to mandatory prayer much earlier if it was necessary. But after examination of the witnesses, he approached the Court to amend the prayer as such it is not maintainable and also it would change the character of the suit. Therefore, the said application was dismissed. Challenging the same, the plaintiff preferred this revision.

3. At the time of the argument, the learned counsel for the revision petitioner would submit that the trial Court failed to take note of the fact that already he approached the Court for declaration and permanent injunction in respect of the suit property, not to cause any interference. But



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during the pendency of the suit, the tar road was laid by the officials, which necessitated him to file an application to amend the prayer, including mandatory injunction and if he was not permitted to amend the prayer, in future, he would put to hardship while executing the decree. But, the trial Court without appreciating the legal aspects, erroneously dismissed, which needs interference.

4. By way of reply, the learned counsel appearing for the respondents 2 to 5 submits that as per the rules, they laid down the tar road and this fact was known to the plaintiff but he had not taken any steps immediately. But after examination of witnesses, he approached the Court with such application, which clearly indicates that he wants to drag on the proceedings. If at all this is permitted, it would change the character of the suit.



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5. While considering both sides submissions and on perusal of the records, it is revealed that during the cross examination of P.W.1, the plaintiff filed application to amend the prayer including mandatory injunction. Admittedly, he filed a suit for declaration and permanent injunction in respect of 7 cents. Now, the contention of the plaintiff is that during the pendency of the suit proceedings, officials laid the tar road in the suit property. This fact is not denied by the defendant also.

6. Having approached the Court for the relief of declaration and subsequently, some alteration made in the suit property, which necessitated the plaintiff to amend the prayer is justifiable one. But, the trial Court failed to take note of the fact that if at all the plaintiff is not permitted, in future he would be unable to execute the decree. The said application is reasonable in law.



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T.V.THAMILSELVI, J.

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7. Accordingly, the finding of the trial Court is set aside and this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. The trial Court is directed to dispose the matter as expeditiously as possible.

17.11.2022

AT

Index : Yes/No

To

1. The District Munisif Court, Harur.

2. The President,
Morappur Panchayat,
Harur Taluk, Dharmapuri District.

3. The Block Development Officer,
Morappur Panchayat,
Harur Taluk, Dharmapuri District.

4. The Project Office Engineer,
Block Development Office, Morappur,
Harur Taluk, Dharmapuri District.

5. The District Collector,
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