



C.R.P.No.3235 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3235 of 2022
and C.M.P.No.17163 of 2022

S.Selvam

.. Petitioner

Vs.

1.Rajendran

2.Rajeswari

3.Ramamurthy

4.Neeladevi

5.S.Myilsamy

6.Mani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the fair and decretal order dated 07.06.2022 made in I.A.NO.1 of 2022 in O.S.No.135 of 2012 on the file of the Learned District Munsif Court, Gobichettipalayam by allowing this Civil Revision Petition.

For Petitioners : M/s.N.Manoharan

For Respondent : M/s.M.Guruprasad for Caveator R3
: No Appearance for R1, R2 and R4 to R6



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ORDER

This Civil Revision Petition has been filed challenging the order passed by the Court below allowing the amendment application.

2. The respondents 1 to 5 filed a suit for declaration of easementary right over the use of the suit cart track and for permanent injunction restraining the revision petitioner and 6th respondent from interfering with the right to use the suit property. Pending suit the 2nd defendant in the suit namely Pazhaniammal died. The respondents 1 to 5 /plaintiffs filed an application for amendment of the plaint in I.A.No.1 of 2022 by way of amendment. The respondents 1 to 5 sought for inclusion of the word "died" along with the name of the 2nd defendant in the shorter and longer cause title, docket sheet and valuation sheet. Apart from that the respondents 1 to 5 wanted to include new paragraph 9(b) wherein they have stated that on 01.08.2021, Advocate Commissioner conducted local inspection of the suit property and thereafter the revision petitioner herein had altered the physical features of the suit property and they are bound to restore the physical features to its original position.

3. The Court below allowed the said amendment application and aggrieved by the same, the revision petitioners have come up by way this revision.



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4. The learned counsel for the petitioner submitted that the 2nd respondent who remained exparte before the Court below passed away. There is a procedure to be followed in C.P.C., to seek exemption from bringing legal representatives on record. However, instead of doing so, the respondent have filed a petition to amend the cause title seeking inclusion of the word "died" and the procedure followed by the respondent is not proper. Consequently, the learned counsel for the revision petitioner submitted that the respondent by way of amendment wanted to include a new paragraph in plaint, stating that subsequent to the local inspection of the Advocate Commissioner, the revision petitioners had altered the physical features of the suit property.

5. According to the counsel for the petitioner, any prayer made by the respondents for restoration of the suit property to its original position is barred by the limitation. It is an admitted fact that the 2nd defendant in the suit namely Pazhaniammal had passed away pending the suit and respondents 1 to 5 by way of amendment wanted to incorporate a word died along with the name of 2nd defendant and the same will not cause any irreparable injury to the revision petitioners.



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S.SOUNTHAR, J.

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Likewise, by adding a new paragraph 9(b), respondents 1 to 5 only seeks to include certain facts relating to alteration of physical features of suit property pending suit.

The correctness of the same cannot be gone into at this stage.

6. I do not think if the impugned order is allowed to stand, it will cause any irreparable injury to the revision petitioners and hence I am not inclined to exercise the supervisory jurisdiction available under Article 227 of the Constitution of India. This Civil Revision Petition is dismissed. However it is open to petitioners to file Additional written statement in respect of amendment made in the plaint and raise his objection therein within four weeks from the date of receipt of this order. No costs. Consequently, connected miscellaneous petition is closed.

11.10.2022

Index: Yes/ No

Speaking Order / Non-Speaking Order

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To

The District Munsif Court,
Gobichettipalayam.

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