



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P (NPD) .No.3844 of 2017
and
CMP.No.17945 of 2017

1.N.Kuppusamy
2.M.Kuppusamy

... Petitioners

Vs.

Nataraj

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned District Munsif, Kangayam made in I.A.No.905 of 2017 in O.S.No.217 of 1998 dated 12.09.2017.

For Petitioners : Mr.N.S.Sivakumar

For Respondent : Mr.S.Saravanan

O R D E R

This Civil Revision Petition arises from O.S.No.217 of 1998, which is now pending on the file of the District Munsif Court at Kangayam. The defendants in the said suit is the petitioners herein.

2.The said suit in O.S.No.217 of 1998 was filed by the respondent herein, seeking permanent injunction with respect to a water channel. As per the schedule given in the plaint, the water channel is in Muthur Village, Kangayam Taluk, Vellakovil Sub-District in Erode District, and is situated in R.S.No.447/1.

3.The Reliefs sought in the said suit was for permanent injunction, restraining the defendants from interfering with the plaintiff's peaceful usage of the water in the water channel either by putting up any construction or by breaking the bund in the said water channel.

4.The written statement was filed by the defendants in the said suit.

5.Thereafter, judgment was passed by the learned District Munsif at Dharapuram on 16.08.1999, by which judgment and



decree, the suit was dismissed.

6. Thereafter, the respondent herein / plaintiff filed A.S.No.36 of 1999 before the Sub-Court at Dharapuram. The learned Sub-judge, by judgment dated 11.02.2000 had remitted the suit back for fresh consideration.

7. The said judgment in A.S.No.36 of 1999 was questioned in C.M.A.No.547 of 2000 and the revision petitioner herein had withdrawn the said Civil Miscellaneous Appeal.

8. Thereafter, a Commissioner appears to have been appointed and objections were also filed by either side. Then, the revision petitioners / defendants appear to have constructed a tank over the water channel. This necessitated the respondent / plaintiff to file I.A.No.905 of 2017 in the said suit, seeking to amend the relief and seeking to demolish and remove the tank constructed by the respondents / petitioners herein. A counter was filed. An order was passed on 12.09.2017, permitting such amendment.

9. The learned counsel appearing for the revision petitioners / defendants made a plea that the learned District Munsif should not have allowed the said application for amendment, since there was a shift in the cause of action and also the amendment was effected after the period of limitation.

10. However, the cause of action for filing the said amendment application is the construction of the tank by the petitioners herein. The suit itself had been filed seeking permanent injunction protecting usage of the water channel by the respondent. If a water tank is built, then, naturally, there is a possibility that it would interfere with the usage of the water channel by the respondents. Therefore, necessity arose to file necessary application to amend the plaint, seeking demolition of the water tank and to restore status-quo as on the date of the suit. It is seen that the petitioners herein have not filed additional written statement. I would therefore, dismiss the Civil Revision Petition, but grant the following liberties:-

i) The petitioners herein may be permitted to file an additional written statement to the amendment in the plaint.

ii) Necessary issues may also be framed and particularly, with respect to limitation be framed by the learned District Munsif.

11. All these aspects will have to be gone into only during the course of the Trial. Thereafter, on conclusion of the Trial, let judgment be passed.



12. Since the suit itself is almost 23 years old, a direction is issued to the learned District Munsif, Dharapuram to dispose of the suit on or before 31.12.2022.

13. With the said observations, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To-

1. The District Munsif Court,
Kangayam
2. The District Munsif, Dharapuram

Copy to:-

The Section Officer,
V.R Section,
High Court, Madras-104.

+1cc to Mr.N.S.Sivakumar, Advocate, S.R.No.11327
+1cc to Mr.S.Saravanan, Advocate, S.R.No.11036

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GSM(CO)
CT 10/03/2022