



CRP(PD)(MD)Nos.2086 and 2129 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)Nos.2086 and 2129 of 2022

and

CMP(MD)Nos.9590 and 9836 of 2022

Edumbaraja (died)

1. Indirani

2. Maharaja

... Petitioners in
both CRPs.

versus

1. Venkatachalam

2. The Tahsildar,
Aandipatti Taluk,
Aandipatti.

3. The District Collector,
Theni District.

... Respondents in
both CRPs.

Prayer in CRP(PD)(MD)No.2086 of 2022: Civil Revision Petition
filed under Article 227 of the Constitution of India, against the order
dated 24.03.2022 made in I.A.No.11 of 2022 in O.S.No.149 of 2012 on



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the file of the District Munsif, Aandipatti.

Prayer in CRP(PD)(MD)No.2129 of 2022: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 05.07.2022 made in I.A.No.12 of 2022 in O.S.No.149 of 2012 on the file of the District Munsif, Aandipatti.

For Petitioners
in both CRPs : Mr.S.Ramesh

For R1 in
both CRPs. : Mr.N.Sathish Babu
For R2 and R3
in both CRPs. : Mr.M.Sarangan

COMMON ORDER

CRP(PD)(MD)No.2086 of 2022 has been filed against the order dated 24.03.2022 passed in I.A.No.11 of 2022 in O.S.No.149 of 2012 by the learned District Munsif, Aandipatti.

2. CRP(PD)(MD)No.2129 of 2022 has been filed against the order dated 05.07.2022 passed in I.A.No.12 of 2022 in O.S.No.149 of 2012 by the learned District Munsif, Aandipatti.



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3. The petitioners' father, namely, Edumbaraja, originally filed a suit in O.S.No.5 of 2009 against the first respondent/defendant, before the District Munsif Court, Aandipatti, seeking the relief of injunction, which was dismissed by the trial Court, by Judgment and Decree dated 22.01.2020. During the pendency of the earlier suit, the petitioners' father Edumbaraja has also filed the present suit in O.S.No.149 of 2012 against the respondents/defendants, before the District Munsif, Aandipatti, seeking the relief of declaration that he is having title over the property and also the consequential relief of permanent injunction. Pending the suit, the original plaintiff Edumbaraja died on 23.03.2020 and the petitioners herein, who are the legal heirs of the deceased Edumbaraja, have stepped into the suit proceedings. Thereafter, they have filed an interlocutory application in I.A.No.11 of 2022 under Order 6 Rule 7 CPC to amend the plaint stating that they derived title through certain documents and those documents are necessary in the suit proceedings and therefore, the plaint has to be amended so that



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they can mark those documents during the trial. They also filed another interlocutory application in I.A.No.12 of 2022 under Order 23 Rule 3 CPC to withdraw the present suit with liberty to file a fresh suit. The trial Court, by order dated 24.03.2022, dismissed the interlocutory application in I.A.No.11 of 2022 holding that the documents introduced by the petitioners are not relevant to the suit property. The trial Court, by order dated 05.07.2022, has also dismissed the interlocutory application in I.A.No.12 of 2022. Aggrieved over the same, the present Civil Revision Petitions are filed.

4. The learned counsel appearing for the petitioners submits that insofar as the amendment application is concerned, at the time of considering the application for amendment, the merits pleaded in the amendment application cannot be considered by the Court and after allowing the amendment application, the merits can be gone into only at the time of trial. In support of his contention, he also relied upon a Judgment of the Hon'ble Apex Court in the case of **Rajesh Kumar**



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Aggarwal and others vs. K.K.Modi and others, wherein, it was held as follows:

“While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsify of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the state of allowing the prayer for amendment.”

5. The learned counsel for the petitioners further submits that the original plaintiff Edumbaraja was ignorant and therefore, without knowing the title documents, he prosecuted the suit. During the pendency of the suit, he died on 23.03.2020 and subsequently, the petitioners herein were impleaded as parties to the suit proceedings. Thereafter, they have found certain documents, which are relevant to the suit proceedings and therefore, they filed the interlocutory application in I.A.No.11 of 2022 to amend the plaint. If the



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amendment application is not allowed, the petitioners would be greatly prejudiced. He further submits that the petitioners are also prepared to pay any cost for allowing the amendment application.

6. The learned counsel appearing for the first respondent submits that the documents submitted by the petitioners are irrelevant to the suit property and none of survey numbers have been mentioned in the documents. The trial Court has also meticulously viewed the documents and dismissed the application on the ground that if the amendment is allowed, the nature of suit would be changed. He further submits that the petitioners' father filed a suit in O.S.No.5 of 2009 against the first respondent seeking injunction. Thereafter, he has also filed the present suit in the year 2012 against the respondents/defendants seeking declaration and also permanent injunction. The present suit is also pending for the past 10 years, however, now only, the amendment application was filed and this would amount to further delay in suit proceedings. He further submits



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that the respondents/defendants have also suffered a lot in view of said proceedings.

7. This Court considered the rival submissions made and perused the materials available on record.

8. The petitioners' father Edumbaraja, earlier, filed the suit in O.S.No.5 of 2009 against the first respondent/defendant, seeking the relief of injunction, which was dismissed by the trial Court, by Judgment and Decree dated 22.01.2020. During the pendency of the earlier suit, the petitioners' father Edumbaraja also filed the present suit in O.S.No.149 of 2012 against the respondents/defendants, before the District Munsif, Aandipatti, seeking the relief of declaration of title and permanent injunction. In the said suit, he claimed title over the property that the suit property is an ancestral property and also by adverse possession. Pending the suit, the original plaintiff Edumbaraja died on 23.03.2020. Thereafter, the petitioners herein, who are legal



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heirs of the deceased Edumbaraja, were impleaded as parties to the suit proceedings.

9. The petitioners/plaintiffs claims that they are able to collect the documents now only and his father on his ignorant has not found out the documents and not placed it at the relevant point of time. Therefore, they pray for allowing the amendment application. If the amendment application is not allowed, they will be put to irreparable loss.

10. Though the first defendant has disputed that survey number has not been mentioned in the document, the petitioners/plaintiffs can establish the same through boundaries.

11. The first defendant further disputed that the documents produced by the petitioners are not relevant to the suit property. In the present suit, trial is yet to commence. Therefore, the relevancy of



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documents can be decided during the trial. It is always open to the defendants to file an additional written statement and also file necessary application to test the veracity of the documents during the trial. Therefore, this Court is inclined to set aside the order dated 24.03.2022 made in I.A.No.11 of 2022 in O.S.No.149 of 2012 on the file of the District Munsif, Aandipatti.

12. Accordingly, CRP(PD)(MD)No.2086 of 2022 is allowed. The order dated 24.03.2022 made in I.A.No.11 of 2022 in O.S.No.149 of 2012 on the file of the District Munsif, Aandipatti, is set aside on condition that the petitioners shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the first respondent, within a period of one month from the date of receipt of a copy of this order.

13. On production of proof for payment of cost, the trial Court, namely, the learned District Munsif, Aandipatti, shall permit the plaintiffs to amend the plaint and conclude the trial and dispose of the



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suit in O.S.No.149 of 2012 on merits and in accordance with law,
within a period of six months from the date of amending the plaint.

14. In view of the order passed in CRP(PD)(MD)No.2086 of 2022, CRP(PD)(MD)No.2129 of 2022 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.11.2022

Index : Yes / No.

Internet : Yes / No.

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To

1. The District Munsif,
Aandipatti.



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B.PUGALENDHI, J.

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