



C.R.P.PD.No.987 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20/4/2023
Pronounced on	29/11/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.987 of 2023

a n d

C.M.P.No.7277 of 2023

1. R. Palanisamy

2. P. Senthilvel ... Petitioners

Vs

Nagarajan ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order dated 20/2/2023 made in I.A.No.3 of 2023 in O.S.No.83 of 2021 on the file of the District Munsif court, Anthiyur, Erode District and to dismiss the above IA.

For Petitioners ... Mr.D.Selvaraju

For respondent ... Mr.M..Guruprasad

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ORDER

This Civil Revision Petition is filed to set aside the orders dated 20/2/2023 passed in I.A.No.3 of 2023 in O.S.No.83 of 2021 on the file of the District Munsif court, Anthiyur, Erode District.

2. The brief facts which are necessary for the disposal of this Civil Revision Petition are as follows:-

The respondent/plaintiff has filed O.S.No.83 of 2021 on the file of the learned District Munsif Court, Anthiyur, Erode District against the petitioners/defendants seeking to grant permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the suit property and to grant mandatory injunction directing the petitioners/defendants to remove the underground pipeline which was laid recently running from the well through the land belonging to the second petitioner/second defendant in re-survey No.573, as per partition effected on 9/9/2020.



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3. It is the case of the respondent/plaintiff that the first petitioner/first defendant, respondent/plaintiff and children of plaintiff sister by name Rajammal have partitioned the properties as per registered partition deed dated 9/9/2020, vide, document No.2173 of 2020 of the Sub-Registrar, Amapet. As per the said partition, A schedule properties were allotted to the respondent/plaintiff and B schedule properties were allotted to the first petitioner/first defendant and since then both of them have been enjoying their respective properties peacefully.

4. There is a common agricultural open well fitted with electric motor in Re-survey No.519/1. As per the partition deed, dated 9/9/2020 the petitioners/defendants and respondent/plaintiff can draw waters from the well consecutively for two days by way of rotation and if a bore well is dug either separately or jointly, they can use common electric service connection of the well by fixing the change over box. As per the partition deed, both the parties have to bear the expenses for maintaining the common well, electric pump set and common cart track equally.



5. The petitioners/defendants have allegedly caused obstruction to the respondent/plaintiff on 30/1/2021, in respect of usage of water from the common well, thereby the respondent/plaintiff gave a complaint to Vellitirupur Police Station on 1/2/2021, however, Police have directed both the parties to approach the Civil Court as the issued involved is civil in nature, thereby Civil Suit is filed.

6. It is the contention of the petitioners/defendants has submitted that the underground pipeline is existing for the past 20 years and that there is no record to show that the pipeline was laid recently, and that the plaintiff could have taken Advocate Commissioner to examine whether the pipeline was laid recently or existing since long time. It is the further contention that the respondent/plaintiff cannot seek the relief of mandatory injunction without the relief of declaration of title, and the prayer sought for by the respondent/plaintiff is vague and not clear and that the schedule of property is incorrectly mentioned.

7. After completion of trial and after hearing the arguments of both sides, when main suit was posted for judgment, the respondent/plaintiff has filed I.A.No.3 of 2023 seeking amendment of plaint, alleging that



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inadvertently the relief of permanent injunction was sought even in respect of item No.2 which belonging to the plaintiff himself, and sought for amending the prayer for permanent injunction, restricting the relief only in respect of item No.1 of the property. In respect of the second prayer of mandatory injunction also amendment was sought for amending the extent of pipeline as 18 feet instead of 180 metres.

8. On hearing both sides, the trial Court has allowed I.A.No.3 of 2023, on payment of cost of Rs.1,500/-. Aggrieved by the same, the present petition is filed.

9. Heard Mr.D.Selvaraju, learned counsel for the petitioners and Mr.M.Guruprasad, learned counsel for the respondent.

10. Order VI Rule 17 of the Code of Civil Procedure runs as under:

Amendment of the pleadings – The Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just



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and all such amendments shall be made as may be necessary, for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

11. After completion of pleadings, Court will draw the issues to be settled between the parties, and on the basis of which the parties are expected to lead their evidence both oral and documentary, thereby, once the trial is commenced, normally, amendment of pleadings shall not be permitted.

12. The first petitioner/first defendant has filed a detailed written statement, wherein it is clearly mentioned that the prayer portion of the plaint is vague. In spite of that, the respondent/plaintiff has failed to



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take steps in amending the plaint and allowed the issues to be framed, trial to be commenced and arguments to be heard. Once the respondent/plaintiff has missed the opportunity of amending the plaint initially, at this stage of judgment, the respondent/plaintiff cannot be permitted to amend the plaint.

13. The trial Court has passed the impugned order on the ground that even though there is a delay, no prejudice is caused even if the proposed amendment is allowed. The finding of the trial Court cannot be accepted. The proposed amendment would certainly cause prejudice to the petitioners/defendants as the petitioners/defendants have specifically taken the plea that the description of the schedule is not properly mentioned and the said defence will not be available, if the amendment is allowed to be carried out. Further, if amendment is allowed, it amounts to denova trial as petitioner/defendant will have to be permitted to file additional written statement, issues may have to be reframed, evidence has to be reopened and again arguments have to be heard. Considering the above, trial Court has committed error in passing the impugned order and permitting the respondent/plaintiff to amend the plaint.



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14. In the result, this Civil Revision Petition is allowed and the order passed in I.A.No.3 of 2023 in O.S.No.83 of 2021 on the file of the District Munsif, Anthiyur, Erode District is hereby dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

29/11/2023

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

The District Munsif, Anthiyur, Erode District



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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29/11/2023