



C.R.P.No.4051 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4051 of 2023

and

C.M.P.No.24754 of 2023

Rajavel

... Petitioner

-Vs-

1.Chinnasamy

2.Ramasamy

3.Chandrasekar

4.Chinnaponnu

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to pass an order by dismissing the order passed by the learned Principal District Munsif, Kallakurichi in I.A. No.1789 of 2022 in O.S. No.5 of 2015 dated 06.03.2023.

For Petitioner

: Ms.V.Sasirekha



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ORDER

Challenging the impugned order passed in I.A.No.1789 of 2022 in O.S.No.5 of 2015 passed by the learned Principal District Munsif, Kallakurichi, the Revision Petitioner/defendant preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the respondents/plaintiffs filed an application to amend the pleadings as there was an encroachment made by the defendant by putting up construction and the same was revealed in the Commissioner's report. Hence, necessity arose for them to amend the pleadings by including the prayer of declaration and recovery of possession and also prayed to amend the description of property by mentioning the alleged encroachment. That application was objected by the defendant stating that after examination of D.W.1, nearly about 7 years later from the date of Commissioner's report, as such is not maintainable. But, the trial judge on hearing both side submissions, allowed the application holding that as per the order passed in I.A.No.864 of 2022, one Chinnaponnu was added as 4th plaintiff in the suit and thereafter, as per the Commissioner's



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report, it reveals that there was some encroachment made by the defendants, thereby, necessity arose for them to file the said application. Accordingly, the said application was allowed on payment of cost. Aggrieved over the same, the revision petitioner/defendant preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that the trial judge failed to take note of the fact that nearly after lapse of 8 years from the date of Commissioner's report, the said application was filed by the plaintiffs and the same was entertained. But, without considering the same, the trial judge allowed the application. Hence, he prayed to set aside the findings of the trial judge.

5. Records perused. On perusal of entire facts, it is true that the report was filed long back, but now the trial was begun and the original suit was filed for the relief of declaration and recovery of possession. As per the Commissioner's report, it reveals that the defendant made some encroachment. So, necessity arose for them to amend the prayer as well as description of property. If at all, any encroachment or any construction is made by the defendant, it would affect the right of plaintiffs. So, to avoid multiplicity of proceedings, the trial judge rightly appreciated the facts and



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allowed the application, which needs no interference. After the commencement of trial, that application was filed. Therefore, the plaintiffs are also advised to cooperate with the proceedings, since because the suit is pending for more than 7 years. Hence, I do not find any merit in this Civil Revision Petition. Accordingly, this Civil Revision Petition is dismissed. However, the trial judge is directed to complete the trial and dispose the case as early as possible as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.11.2023

Index : Yes/No
Speaking Order : Yes/No
rpp

To

The Principal District Munsif, Kallakurichi.



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T.V.THAMILSELVI, J.

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