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C.R.P.No.2558 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.03.2023

Pronounced on : 09.05.2023

CORAM: **JUSTICE N.SESHASAYEE**

C.R.P. No.2558 of 2019
and CMP.No.16839 of 2019

1.Mailsamy @ Seeram Gounder
2.Thirumathal ... Petitioners / Petitioners / Plaintiffs

Vs.

1.Krishnasamy
2.Palanisamy
3.Jagadeesh Chandran
4.Subramaniam ... Respondents / Respondents / Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed in I.A.No.158 of 2019 in O.S.No.619 of 2005 on the file of the District Munsif Court, Udumalpet, dated 20.06.2019.



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For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Mr.N.Thiagarajan for R2 to R4
R1 - No appearance (served)

ORDER

The present revision is filed challenging an order passed in I.A.No.158 of 2019 in O.S.No.619 of 2005 on the file of District Munsif Court, Udumalpet, dismissing the application filed by the plaintiffs/revision petitioners for amending the plaint under Order VI Rule 17 CPC.,

2. The plaintiffs have laid the suit alleging that they are the owners of 'A' schedule property in the suit, that they have got a right of way through 'B' schedule property. A Commissioner has been appointed for local inspection, and he had found that the defendants had cultivated corn in 'B' schedule property. It is in these circumstances, the plaintiffs have filed I.A.No.158/2019 for amending the plaint to insert an alternate relief of mandatory injunction to provide a right of pathway through any place in 'B' schedule. The trial Court vide its order dated 20.06.2019, dismissed the application on the ground that it was filed some 14 years after the suit . This is now under challenge.



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3. Heard both sides. The learned counsel on both sides stuck to the line of contentions before the trial Court.

4. The learned counsel for the revision petitioners filed a memo stating that the second petitioner, the mother of the first petitioner had died on 23.11.2002 pending this CRP, and that her legal heir, the first petitioner is already on record.

5. If the case of the plaintiffs / revision petitioners is carefully scrutinised, they sought right of way over a specific place in 'B' schedule property. But the Commissioner has found that some corn has been cultivated today by the defendants/respondents in the said place. If the case of the plaintiffs/revision petitioners is true, then cultivation of corn in the said place which according to the revision petitioners constitute a pathway involves to change the character of the suit property. It is in this backdrop, the plaintiffs sought for an alternate right of pathway in 'B' schedule by amending the plaint. And the trial Court in its order has held that the prayer of the plaintiffs would change the character of the suit, but this Court wonders how? It is in this backdrop, without giving up



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their claim of right of way through 'B' schedule property, the plaintiffs/ revision petitioners merely wants the Court to decide where the pathway could be given to them. This does not alter the character of the suit, but only a greater freedom to the Court to decide an alternate relief, in the eventuality of plaintiffs succeeding in the suit.

6. In conclusion, this Court finds every reason to interfere with the order of the trial Court and sets aside the order in I.A.No.158 of 2019 in O.S.No.619 of 2005 on the file of the District Munsif Court, Udumalpet, dated 20.06.2019. The revision petition is allowed and the trial Court is now required to dispose of the the suit on or before 05.09.2023. No costs. Consequently, connected miscellaneous petition is closed.

09.05.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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To:

1.The District Munsif Court
Udumalpet.

2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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