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C.R.P.No.3772 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

C.R.P.No. 3772 of 2023

1.Nazir Hussain Malumiar
2.Mohamed Thahir Malumiar
Both represented by power agent,
A.Jahir Hussain.

.. Petitioners

Vs

1.Jainambugani
2.Fathima Beevi
3.Shahul Hameed
4.Sulthan Gavus Malim
5.Fathimuthu Joharan Nachial
6.Julaiga Nachial

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decree dated 03.04.2023 in I.A.No.2 of 2022 in O.S.No.29 of 2018 on the file of District Judge, Karaikal.

For Petitioners : Mr. S. Parthasarathy, Senior Counsel
for M/S. Achari and Antoni Associates

For Respondents : Mr. Anirudh Krishnan



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ORDER

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This Civil Revision Petition is filed challenging the impugned order passed in I.A.No.2 of 2022 in O.S.No.29 of 2018 on the file of District Judge, Karaikal, the plaintiffs have preferred this revision.

2. Before the trial Court, the plaintiffs filed a suit in O.S.No.29 of 2018 praying for declaration and consequential injunction in respect of the suit property as discussed in the plaint schedule against six defendants. All the defendants appeared and contested the suit by filing a written statement. As per the objection of the defendants, totally denied the title of the plaintiffs over the suit property. Now the issues were framed and trial was commenced. At this stage, the plaintiffs filed an application to amend the plain in I.A.No.2 of 2022 stating that as the plaintiffs were away and they could not trace the original title deeds and now only they came to look at the sale deeds dated 12.02.1974 and 10.07.1985. So necessity arose for them to amend the plaint. Accordingly, they filed an application to amend the pleadings. That application was strongly resisted by stating that after commencement of the trial, they have filed an application to amend the



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pleading, as such is not maintainable, besides the alleged averments also to change the character of the suit.

3. Considering both submissions, the trial Judge conclude that now at the stage of the trial, the plaintiffs come forward with a new pleadings which would change the character of the suit. Accordingly, the application was dismissed.

4. Aggrieved by the said finding, the petitioners have preferred this revision.

5. The learned counsel for the petitioners submitted that while filing the suit, the plaintiffs claimed right through Mohamed Hussain Malumiar. Now they want to claim title through one Vanjur Gani. To that effect, the genealogy tree filed before this Court. Therefore, the alleged amendment would not change the character of the suit.



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6. However the learned counsel appearing for the respondents / defendants submitted that the suit was filed in the year 2018, now the plaintiffs want to amend the pleading by including new claim, as such is not permissible.

7. Considering both submissions, the genealogy tree was already submitted before this Court and now they want to trace the original title deeds, by such amendment, does not change the character of the suit but, the trial Judge erroneously dismissed the application. Therefore, the finding of the trial Court in I.A.No.2 of 2022 in O.S.No.29 of 2018 is set aside. However, liberty is given to the defendants to file an additional written statement and to contest the case as per the manner known to law.

8. In the result, this Civil Revision Petition is allowed. No costs.

06.11.2023

Index :Yes/No
Neutral Citation :Yes/No
AT

To

4/6



The District Judge, Karaikal.

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T.V.THAMILSELVI, J.

AT

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