



C.R.P.Nos. 3744 & 3870 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

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

C.R.P.Nos. 3744 & 3870 of 2023

and

C.M.P.No. 23883 of 2023

1. Subramaniyan
2. Selvam

... Petitioners

-Vs-

Kamaludeen

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 02.08.2023 passed in I.A.Nos.1 and 2 of 2022 in O.S.No.334 of 2014 on the file of District Munsif Court, Omalur.

For Petitioners : Mr.G.Surya Narayanan

ORDER

Challenging the impugned common order passed in I.A.Nos.1 and 2 of 2022 in O.S.No.334 of 2014 by the learned District Munsif, Omalur, the Revision Petitioners/plaintiffs preferred these Civil Revision Petitions.



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

3. Before the trial court, the Revision Petitioners/plaintiffs have filed a suit in O.S.No.334 of 2014 on the file of District Munsif cum Judicial Magistrate, Omalur praying for the relief of declaration and permanent injunction in respect of the suit property, more particularly, southern side common lane and the same was filed against the defendant, who is adjacent owner of their property. The defendant appeared and filed his written statement denying the plaintiffs' claim stating that the suit lane is absolutely belong to him, in which the plaintiffs have no right. Now, the trial was begun and during the evidence, the plaintiffs came to know that inadvertently, they omitted to mention the easement by prescription in the plaint. To that effect, he wanted to amend the same in the prayer column. Therefore, they have filed applications to amend the pleadings and to reopen the suit. The said applications were contested by the defendants stating that at the stage of argument, the plaintiffs wanted to amend the prayer by including the said easement by prescription without any pleading in the plaint. Furthermore, already they are having a common pathway on the northern side, hence, they are not entitled to file the said



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applications. On hearing both side submissions, the trial judge held that after completion of evidence, when the case is posted for argument, the plaintiffs filed such applications to amend the prayer by including easement by prescription and to reopen the suit, as such is not acceptable one and to that effect, they have not mentioned any pleadings in the plaint. Accordingly, the trial judge dismissed the said applications. Aggrieved over the said findings, the plaintiffs filed the present Civil Revision Petitions.

4. The learned counsel for Revision Petitioners would submit that the trial judge erroneously concludes that there is no pleading in the plaint in respect of the said amendment of easement by prescription without verifying the averments made in paras 5, 6 and 7 of the plaint. Hence, he prayed to set aside the findings rendered by the trial judge.

5. Records perused. On a bare perusal of the plaint, it reveals that the plaintiffs filed a suit for declaration and permanent injunction against the defendant in respect of suit lane claiming it as a common lane between the plaintiffs and the defendant. Furthermore, to derive the enjoyment of suit lane, they have stated that his father Subramaniam has got the second item of suit properties by way of partition in the year of 1987 and the lane



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is mentioned in the suit documents, thereby they are using the lane from the year of 1987 onwards. However, in the plaint pleadings, even in paragraph 9 also, they have mentioned about the defendant's objection to use the said lane by the plaintiffs and in entire pleadings, they have mentioned about the same, but they omitted to mention the right of easement by prescription in the prayer column. Therefore, the reasons assigned by the trial judge without considering the plaint averments, as such is erroneous one and the same is liable to be set aside. Accordingly, these Civil Revision Petitions are allowed and the findings rendered by the trial judge in I.A.Nos.1 and 2 of 2022 in O.S.No.334 of 2014 is set aside and the said applications are ordered to be allowed. The opportunity is to be given to the defendant to submit his additional written statement and thereafter, the trial judge is directed to proceed with the trial and dispose the suit on merit within a period of three months from the date of receipt of copy of this order. No costs.

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Index : Yes/No

Speaking Order : Yes/No

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To

The District Munsif, Omalur.



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T.V.THAMILSELVI, J.

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