



CRP. No. 4961 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

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

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Periya Pongiyannan (Died)

1.ChinnaPongiyannan

2.Saroja

...Petitioners

Vs.

1.Mayilsamy

Masiriyammal (Died)

2.Sarasal

3.Sellaammal

4.Radhamani

5.Suguna

6.Lokesh

7.Mani

8.Boopathi

....Respondents

PRAYER : This petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order in I.A No. 6 of 2023 in O.S No. 314 of 2010 on the file of the District Munsif Court, Gobichettipalayam dated 20.11.2023.



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For Petitioner : Mrs.R.Poornima

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ORDER

This petition has been filed to set aside the order and decreetal order in I.A No. 6 of 2023 in O.S No. 314 of 2010 on the file of the District Munsif Court, Gobichettipalayam dated 20.11.2023..

2. The petitioners herein filed I.A No. 6 of 2023 in O.S No. 314 of 2010 before the Trial Court to filed additional written statement seeking for recovery of possession of the encroached portion by the plaintiff. After considering the submissions on either side the Court below dismissed the said application. challenging the same the petitioners filed this Civil Revision Petition.

3. The learned counsel for the petitioners submits that the plaintiff filed suit for permanent injunction and the petitioners filed written statement. While so, the Advocate Commissioner was appointed and his report reveals that the plaintiff has encroached the petitioners' land measuring 50 cents in S. No. 174/4 Old S No. 175A1 and immediately on knowing, the petitioners herein filed Additional written statement seeking



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for recovery of possession of the encroached portion by the plaintiff and also paid Court fee Rs.4,253/- and shown the value of the property as Rs. 1,50,750/-. In fact, counter claim was also sought in the additional written statement. As prayer portion was not mentioned separately along with cause of action the petitioner filed a application under Order 6 Rule 17 of CPC for amendment of written statement and the same was dismissed without any justifiable reason. Hence, he prays to allow this petition.

4. Considering the facts of the case, only after measuring the property by the advocate commissioner they came to know about the encroachment made by the plaintiff. Hence, they filed application to amend the written statement but the Trial court stated that it had no pecuniary jurisdiction to decide the issue as well as amendment petition is not maintainable. On seeing the facts of the case, the suit is filed in the year 2010 and it is at the stage of the arguments. Further, the Court below failed to appreciate the fact that the suit was filed in the year 2010 hence the reason assigned by the Trial Court that it has no pecuniary jurisdiction is not justifiable. Hence, the Order passed by the Trial Court is set aside. Further, the Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this Order.



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WEB COPY 5. In the result, this Civil Revision Petition is allowed. No cost.

Consequently, connected miscellaneous petition is closed.

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To
The XV Assistant Judge, City Civil Court, Chennai



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T.V.THAMILSELVI,J.

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