



C.R.P.(NPD)(MD).No. 1601 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.1601 of 2013

and

M.P(MD) No.1 of 2013

Palayampatti Nadargal Uravinmurai at Madurai
through its Secretary of Properties Committee,
S.Shunmuganathan,
Son of T.Subramania Nadar,
(Aged about 79 years),
Door No.114, 115,
East Masi Street,
Madurai – 625 001.

... Petitioner/Petitioner/
Appellant/Plaintiff

-vs-

1.V.M.Jeyaramachandran (died)

... Respondent/Respondent/
Respondent/Defendant

2. V.M.J.Jeyalakshmi
3. V.M.J.Muthukumar
4. Dhanalakshmi
5. Syamala
6. Padma

... Proposed Respondents

(Respondents 2 to 6 are brought on record as LR's of the deceased sole respondent vide Court order dated 28.01.2022 made in C.M.P(MD) Nos. 8760 to 8762 of 2017 in C.R.P(MD) No.1601 of 2013)



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PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the order dated 06.06.2013 passed in the application in I.A.No.360 of 2008 in A.S.No.16 of 2008 by the learned First Additional Subordinate Judge, Madurai.

For Petitioner : Mr.J.Barathan
For Respondents : Mr.V.P.Rajan – for R2 and R3
: R1 – died
: No appearance – for R4 to R6

ORDER

The present revision petition has been filed by the plaintiff in a suit for declaration that a particular lane is the exclusive lane of the plaintiff.

2. The defendant had filed a written statement contending that the plaintiff does not have any right over the said lane and the defendant is the exclusive owner of the said lane.

3. After trial, the trial Court had arrived at a finding that it is not the exclusive lane of the plaintiff or defendant, but it is a common lane of the plaintiff and the defendant. Challenging the said judgment and decree the



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plaintiff had filed A.S.No.16 of 2008 and the defendant had filed a cross appeal, challenging the finding that the lane is a common lane between the plaintiff and defendant.

4. While the first appeal and the cross appeal were pending, the plaintiff had filed I.A.No.360 of 2008 to amend the prayer in the plaint seeking to include an alternative prayer in the plaint. That in case, if the Court arrives at a finding that the lane is a common lane, a declaration that the suit lane described in the schedule is a common lane belonging to the plaintiff and the defendant may be granted. This amendment application was strongly opposed by the defendant on the ground that such an amendment of plaint cannot be sought for during the pendency of the appeal. The first appellate Court had chosen to dismiss the said appeal on the ground that plaint cannot be amended after the commencement of the trial. Challenging the said order, the present revision petition has been filed.

5. The amendment application filed by the plaintiff indicates that the plaintiff only seeks to amend the plaint in order to incorporate an alternative prayer, which is a lesser prayer than what is prayed for in the original plaint.



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Even without amendment of plaint, civil Court is entitled to grant a lesser prayer than what is prayed for, if the plaintiff establishes his case. Therefore, amendment is not necessary for granting a lesser prayer. The trial Court or the first appellate Court can always invoke Order 7 Rule 7 of C.P.C to mould the relief and to grant a lesser prayer in favour of the plaintiff, in case, if the plaintiff establishes that it is a common lane. Therefore, the amendment application filed by the plaintiff is superfluous and therefore the dismissal of the said application is hereby confirmed.

6. With the above said observation, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

14.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The First Additional Subordinate Judge,
Madurai.

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R.VIJAYAKUMAR,J.

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