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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.07.2023
Delivered on : 08.09.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.483 of 2023
and
C.M.P(MD)No.2338 of 2023

1.Sellammal
2.Murugesan @ Mookan

... Petitioners/ Respondents/
Defendants

Vs.

G.Natarajan

... Respondent/Petitioner/
Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 31.10.2022 in I.A.No.2 of 2021 in O.S.No.1300 of 2011 on the file of the II Additional District Munsif, Tiruchirapalli and allow this civil revision petition.

For Petitioners
For Respondent

:Mr.H.Lakshmi Shankar
:Mr.M.Dinesh Harisudershan

**ORDER**

This civil revision petition is filed against the fair and decreetal order dated 31.10.2022 passed in I.A.No.2 of 2021 in O.S.No.1300 of 2011 by the II Additional District Munsif, Tiruchirapalli.

2. According to the revision petitioners, the above suit was filed by the respondent/plaintiff for permanent injunction. During the pendency of the suit, the respondent/plaintiff filed an application in I.A.No.844 of 2017 for appointment of Advocate Commissioner. In pursuant to the Commissioner's report, the respondent/plaintiff claims that the petitioners/defendants have encroached his property to an extent of 16 cents around in the year 2015. At the time of filing an application for appointment of Advocate Commissioner, the respondent/plaintiff failed to file an application for amendment. It is further submitted that even at the time of filing the proof affidavit on 14.06.2017, there was no allegation about any encroachment by the petitioners/defendants and the report of the Commissioner also clearly established that the petitioners/defendants have fenced their lands. Therefore, the claim of the respondent/plaintiff that the petitioners/defendants have encroached his property only an after thought. The respondent/plaintiff is completely introducing a new case by way of amendment and if such amendment is permitted, the petitioners/defendants



will be put to hardship. The trial Court, without considering the above factual matrix, allowed the amendment petition. Aggrieved over the same, the present civil revision petition is filed.

3.The learned counsel appearing for the petitioners would submit that originally the suit was filed in the year 2011 and the written statement was filed on 31.07.2014. On 14.06.2017, the respondent/plaintiff filed his proof affidavit and on the same day, the respondent/plaintiff filed an application in I.A.No.844 of 2017 for appointment of Advocate Commissioner, in which, the petitioners/defendants filed their counter affidavit on 14.02.2018. On 22.09.2018, the Advocate Commissioner visited the suit property and filed his report. Thereafter, on 21.04.2021 the respondent/plaintiff moved an application in I.A.No.2 of 2021 for amending the plaint after a lapse of 10 years after the suit was filed and three years after, the Advocate Commissioner visited the property. In the said application, the respondent/plaintiff raised a new allegation that irrigation channel running east - west through the defendants' property is obliterated, which did not find place in the report of the Advocate Commissioner. The respondent/plaintiff failed to mention at what point of time, the channel was obliterated. He would further submit that the very existence of irrigation channel was denied in the written statement filed on 31.07.2014 and even at the time of filing the petition for appointment of Advocate Commissioner,



the respondent/plaintiff only claimed that irrigation channel was obliterated.

By way of amendment, the respondent/plaintiff is trying to introduce a new cause of action. Moreover, the said amendment is also barred by limitation.

The plaint ought to have been amended for declaration and appropriate relief of mandatory injunction, within a period of three years from the date of filing the suit. Therefore, the Court below ought not to have allowed the amendment application, which is time barred. Hence, the trial Court without considering the above facts, allowed the application, which calls for interference.

4. On the other hand, the learned counsel appearing for the respondent would submit that the petitioner has not made out a case for revision under Article 227 of the Constitution of India, as no substantial ground has been raised before this Court to make it apparent that there is an error on passing the said impugned order, except raising some vague and factual allegations which this Court would never entertain in a revision under Article 227 of the Constitution of India. The learned counsel further submitted that the petitioners had suppressed the very material fact before this Court in the report and map filed by the Advocate Commissioner before the trial Court noting the physical features of the suit property, whereby the surveyor has identified and observed the encroachment measuring 16 cents made by the petitioners in the suit property. The learned counsel further submitted that



the application for amendment was filed by the respondent which is necessary for the purpose of determining the real questions in controversy between the petitioners and the respondents, as provided under Order VI Rule 17 C.P.C. Further the Hon'ble Apex Court has settled the said law in its decision rendered in ***Sajjan Kumar-vs-Ram Kishan*** reported in ***(2005) 13 SCC 89***. Therefore, there is no merit in the above revision petition and the same is liable to be dismissed.

5. Heard Mr.H.Lakshmi Shankar, learned counsel appearing for the petitioners and Mr.M.Dinesh Harisudershan, learned counsel appearing for the respondent and perused the records available on record.

6. Order 6 Rule 17 of C.P.C., provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just. All such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. However, no such application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due to diligence, the party could not have raised the matter before the commencement of trial.



7. In the present case, the respondent/plaintiff filed the above suit in O.S.No.300 of 2011 for bare injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties comprised in S.F.No.252/4B to an extent of hec.0.28.5 which is equivalent to Ac.0.70 cents with all irrigation facilities situated at Thiruverumbur Taluk, Trichy District. During the pendency of the said suit, the respondent/plaintiff filed an application for appointment of Advocate Commissioner in I.A.No.844 of 2017 to note down the physical features and to measure the suit properties with the assistance of qualified surveyor, to see whether any encroachment is made by the petitioners/defendants. In the said petition, the respondent/plaintiff has stated that during the pendency of the suit, the petitioners/defendants have encroached an extent of 16 cents into the suit properties by moving the ridge towards east. The said petition was objected by the petitioners/defendants. However, the trial Court allowed the application and the Advocate Commissioner also inspected the suit property and filed his report. Thereafter, the petitioner took out an application in I.A.No.2 of 2021 under Order 6 Rule 17 and Section 115 of C.P.C., to grant leave to the respondent/plaintiff to amend the plaint as detailed in the petition. In the said petition, the respondent/plaintiff has stated that in spite of an order of temporary injunction, the petitioners/defendants have encroached into the suit property, which is also noted by the Advocate Commissioner in his report and plan and therefore, it



has become necessary to the plaintiff to seek for the relief of declaration and mandatory injunction.

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8. Further, the contention of the respondent/plaintiff is that the portion encroached by the petitioners/defendants is shown as 'B' schedule property in the suit, which form part of 'A' schedule property, in which, the petitioners/defendants also claim title. Further, the petitioners/defendants have no right or title over the 'B' Schedule property and therefore, it has become necessary to the respondent/plaintiff to seek for the relief of declaration as to the plaintiff title over the 'B' schedule property. Further, the contention of the respondent/plaintiff in the above petition is that the petitioners/defendants are bound to deliver the possession of the suit 'B' schedule property to the plaintiff and therefore, it has become necessary to include in the prayer directing the petitioners/defendants to deliver the possession of 'B' schedule property. Further submission of the respondent/plaintiff is that there is an irrigational channel on the western side of the defendants' property. From the said channel, the respondent/plaintiff was cultivating the suit property by irrigating the water through the channel viz., the suit 'C' schedule property, then existed through the defendants' property.



9. According to the respondent/plaintiff, the said channel measures 3 feet including the ridges on the north south and the channel was situated in the middle of the defendants' property in east west direction. The respondent/plaintiff's were cultivating the suit 'A' schedule property in the above manner through the suit 'C' schedule property. Since the petitioners/defendants resisted the respondent/plaintiff from irrigating the water through the channel the suit 'C' schedule property, the respondent/plaintiff was constrained to file the above suit. During the pendency of the said suit, the petitioners/defendants not only entered into the portion of the suit 'B' schedule property, but also obliterated the channel viz, the suit 'C' schedule property.

10. Hence, it has become necessary for the respondent/plaintiff to seek the relief of mandatory injunction restraining the defendants to restore the suit 'C' schedule property as it was then existed into the defendants' property within a period of time fixed by the Court or through Court of law, thereby the respondent/plaintiff could cultivate the suit 'A' schedule property by irrigating water through 'C' schedule channel, which is running from north east direction on the western side of the defendants' property as shown in the Commissioner's report and plan.



11. Therefore, from the averments made in the amendment petition filed by the plaintiff, it is seen that only from the Advocate Commissioner's report, the plaintiff came to understand that there was an encroachment by the defendants during the pendency of the suit. In the written statement filed by the defendants it is mentioned that water was never taken for cultivation through the lands of the defendants to the suit property and there is no irrigation channel in the lands of the defendants for taking water to the suit property for cultivation. It is further mentioned that the plaintiff wants to create a channel in the defendants' land for taking water to the suit property and other properties. Since it is the specific plea of the plaintiff that he came to know about the alleged encroachment made by the defendants only through the report of the Advocate Commissioner, the plaintiff could not have sought for the said reliefs mentioned in the amendment petition.

12. Therefore, I am of the view that the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. Therefore, the said amendment is not time barred and will not introduce a new cause of action. Therefore, the Court below has rightly allowed the I.A.No.2 of 2021 and no interference by this Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



13. However, considering the fact that the suit is pending from the year 2011, the Court below is directed to dispose the matter on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

08.09.2023

NCC: Yes/No

Index: Yes/No

Internet: Yes/No

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To

1. The II Additional District Munsif,
Tiruchirapalli.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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