



C.R.P.(MD) No.1251 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.1251 of 2023

and

C.M.P.(MD) No.6108 of 2023

R.Indira (died)

1.R.Kamalagirinathan

2.Arunagirinathan

3.R.Gnanagirinathan

4.R.Buvanagirinathan

Latha Mangeswari (died)

5.Hinduja

6.Minor Leharisa

rep. by her next friend and legal guardian

4th petitioner R.Buvanagirinathan

... Petitioners

Vs.

1.Gnanapoonkodi

2.G.Sivakumar

3.Karhikai Deepa



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4.R.Murugalakshmi

WEB CCM 5.Megala

6.Mu.Nagu. Achiyariar Endowment by
its President P.Suresh Nagu,
16 Santhiamman Kovil Street,
Virudhunagar Town,
Virudhunagar Taluk,
Virudhunagar District.

7.State through its District Collector,
Virudhunagar District,
Kumarasamy Raja Nagar,
Virudhunagar.

8.The Tahsildar,
Taluk Office,
Virudhunagar District.

9.The Village Administrative Officer,
Chinnamoppampatti Village,
Virudhunagar Taluk.

10.The Special District Revenue Officer,
National Highways - 7,
(Widening of Four loan Scheme),
Velchamy Nagar, Virudhunagar.

11.Virudhunagar Special Tahsildar,
Land Acquisition,
National Highways - 7,
(Virudhunagar incharge Special Tahsildar (Land
Acquisition 23/3, Muslim North Street,
Aruppukottai).

12.The Revenue Divisional Officer,
Aruppukottai Taluk,
Aruppukottai District.



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13. Project Director,
83-1, First Colony Expansion,
National Highways Board Bypass Road,
Madurai.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.530 of 2018 in O.S.No.19 of 2011 on the file of the District Munsif Court, Virudhunagar dated 03.11.2022.

For Petitioners : Mr.M.Ashok Kumar

ORDER

This Civil Revision Petition has been filed to set aside the impugned order dated 03.11.2022 passed by the District Munsif Court, Virudhunagar in I.A.No.530 of 2018 in O.S.No.19 of 2011.

2. The petitioners are the legal heirs of the first defendant in O.S.No.19 of 2011 pending on the file of the District Munsif Court, Virudhunagar. The said suit was filed by the first to fifth respondents herein for declaratory relief and for injunction against the petitioners and the sixth to thirteenth respondents.



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3. It appears that the above suit was originally dismissed, against which, A.S.No.2 of 2016 was filed before the Sub Court, Virudhunagar. The Sub Court, Virudhunagar has remanded back the case for fresh trial. Before the trial could commence, the first to fifth respondents (plaintiffs) filed I.A.No.530 of 2018 under Order VI Rules 17 & 18 of Code of Civil Procedure, 1908 for amending the plaint which has been allowed by the Court *vide* impugned order dated 03.11.2022.

4. The learned counsel for the petitioners submits that several amendments have been sought for by the first to fifth respondents (plaintiffs), which in turn are impeding on the substantial rights of the petitioners and the petitioners are on the question of law. It is submitted that the Court below has erred in allowing the I.A.No.530 of 2018 *vide* impugned order dated 03.11.2022.

5. A reading of the impugned order indicates that the first to fifth respondents (plaintiffs) filed an appeal against the earlier dismissal of suit in O.S.No.19 of 2011 before the First Appellate Court namely, Sub Court, Virudhunagar in A.S.No.2 of 2016. The Sub Court, Virudhunagar has set



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aside the Judgment and Decree passed by the Court in the earlier round

and has remitted the case back to the Trial Court with the following

observations:-

Trial Court ought to have granted opportunity to the plaintiff to amend the plaint for including the relief of declaration regarding judgment and decree in A.S.No.33/2008. The dismissal of the suit declaiming to grant the relief regarding the judgment and decree in O.S.No. 242/2007 on the ground that the plaintiffs failed to seek Declaration of title in respect of the properties as well as Declaration in respect of the Judgment and decree in A.S.No.33/2008 in the proper so far doing complete justice to the parties in the suit without going into the merits of the case and without deciding any issue on merits, this court is inclined to remand the suit to Trial for fresh Trial.

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The suit is remanded back to the Trial Court for fresh Trial. The Trial Court shall grant sufficient opportunities to the plaintiffs to seek relief of Declaration of Title in respect of the Suit properties and Declaration regarding the Judgment and Decree in Appeal proceedings and grant opportunities to the Defendants to file Additional Written Statement and shall frame proper Issues regarding the said reliefs and give opportunities to both parties to adduce Additional evidence if any on the additional issues and shall deliver the judgment on merits at an earliest point of time.



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6. The learned counsel for the petitioners has placed reliance on the decision of this Court in **Amaravathi and others Vs. Sankaranarayanan and others**, 2018 (5) CTC 364. It is submitted that in the above, under similar circumstances, the Court has laid down the limitation by stating that the Appellate Court after remand shall not permit amendment of pleadings or prayers under any circumstances.

7. The facts of the present case and the facts of the above case cited by the learned counsel for petitioner are not identical. In the present case, the Court has ordered fresh trial. Therefore, amendment sought for by the first to fifth respondents (plaintiffs) which has been allowed by the District Munsif Court, Virudhunagar *vide* impugned order dated 03.11.2022 is to be construed as pre-trial amendment.

8. Thus, there is no justification in interfering with the impugned order passed by the District Munsif Court, Virudhunagar by allowing the pleadings to be amended in O.S.No.19 of 2011 although such amendment has been sought for belatedly by the first to fifth respondents (plaintiffs) by filing the above I.A. on 24.10.2018 & 14.11.2018. Therefore, the impugned order does not call for interference.



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WEB COPY 9. All the issues relating to the limitation are left open to the petitioners to be canvassed before the Court. The petitioners shall therefore file Additional Written Statement, if any, in the light of the amendment that has been allowed, before the trial. The petitioners are also at liberty to file application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 to reject the plaint, in case it is the case of the petitioners that the first to fifth respondents (plaintiffs) advised on the ground that the issue which has been already settled in the earlier round of litigation is being re-agitated.

10. Accordingly, this Civil Revision Petition is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

13.06.2023

NCC : Yes / No
Internet: Yes/No
Index: Yes/ No
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To

1.The District Munsif Court, Virudhunagar.



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2.The District Collector,
Virudhunagar District,
Kumarasamy Raja Nagar,
Virudhunagar.

3.The Tahsildar,
Taluk Office,
Virudhunagar District.

4.The Village Administrative Officer,
Chinnamoppanpatti Village,
Virudhunagar Taluk.

5.The Special District Revenue Officer,
National Highways - 7,
(Widening of Four loan Scheme),
Velchamy Nagar, Virudhunagar.

6.Virudhunagar incharge Special Tahsildar (Land Acquisition),
23/3, Muslim North Street,
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7.The Revenue Divisional Officer,
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C.SARAVANAN, J.

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