



WEB COPY



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.08.2023
Delivered on : 27.09.2023

CORAM

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

C.R.P(MD)No.1988 of 2022
and
C.M.P(MD)No.9126 of 2022

1.Senthamaraikannan
2.Lakshmi alias Duraichi

... Petitioners/Respondents 1 & 2/
Respondents

Vs.

Muthu(Died)
1.Rakkammal
2.Sriram
Raghupathi Lakshmi(Died)
3.Gandhimathi

...Respondent 1 to 3/Petitioner
2,3,5/Appellants

4.Thirunavukarsu

5.The District Collector,
Virudhunagar.

6.The Tahsildar,
Srivilliputtur.

7.The Executive Engineer,
State High Ways
Srivilliputtur.

8.Gopal

...Respondents 4 to 8/Respondents
3 to 7/Respondents 3 to 7



Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 04.08.2022 passed in I.A.No.1 of 2019 in A.S.No.7 of 2014 on the file of the Additional Sub-Court, Srivilliputtur, by allowing this civil revision petition.

For Petitioners	:Mr.A.Sivaji
For R1,R2,R4	:Mr.K.Sudalaiyandi
For R5 to R7	:Mr.G.Suriyanath

ORDER

This civil revision petition is filed as against the fair and decreetal order, dated 04.08.2022 passed in I.A.No.1 of 2019 in A.S.No.7 of 2014 by the Additional Sub-Court, Srivilliputtur.

2.The brief facts, leading to the filing of this Civil Revision Petition, are as follows:-

One Muthu along with others filed a suit in O.S.No.50 of 2005 before the Additional District Munsif, Srivilliputtur, for permanent injunction against the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the suit property. The revision petitioners are the defendants 1 and 2 in the said suit. During the pendency of the said suit, the first plaintiff died and the defendants 4 and 5 were impleaded as the legal heirs of the first plaintiff. Apart from that, Official Respondents were added as respondents 4 to 6, who also contested the suit. The seventh defendant



remained ex-parte. The trial Court, based on the materials and the averments made in the plaint and in the written statement, dismissed the above suit on 11.11.2013. Against which, the respondents 1 to 3/plaintiffs filed an appeal in A.S.No.7 of 2014 before the Additional Sub-Court, Srivilliputtur. During the pendency of the appeal suit, the respondents 1 to 3/plaintiffs filed I.A.No.1 of 2019 under Order VI Rule 17 of C.P.C., to amend the appeal memorandum. The same was opposed by the revision petitioners. However, the appellate Court allowed the application on 04.08.2022. Against which, the present civil revision petition is filed.

3.The learned counsel appearing for the revision petitioners submitted that on account of misdescription of parties, the suit is not maintainable. Considering the above facts, the trial Court had rightly dismissed the suit filed by the respondents 1 to 3/plaintiffs. The respondents/plaintiffs filed an application in I.A.No.1 of 2019 only on 14.10.2019 with delay. The appellate Court ought to have dismissed the application on the ground of delay. The learned counsel further submitted that without adding proper and necessary parties in the suit, the same cannot be cured by allowing the present application to amend the appeal memorandum. The respondents/plaintiffs ought to have filed a separate suit after issuing notice under Section 80 of C.P.C. Without issuing notice under Section 80 C.P.C., to the Government, the suit itself is not maintainable. The learned counsel



further submitted that the issuance of notice under Section 80 of C.P.C., is mandatory and it is not a curable defect. Therefore, the appellate Court allowing the application to amend the appeal memorandum is unsustainable in law. Therefore, he prays for setting aside the order passed by the appellate Court.

4. On the other hand, the learned counsel appearing for the respondents 1, 2 and 4 would submit that the right of the parties should not be curtailed. Therefore, the appellate Court has rightly considering the above facts and allowed the amendment petition filed by the respondents 1 to 3/plaintiffs, in order to have a fair adjudication, which calls for no interference.

5. To support his contention, he has relied upon the decision in ***State of A.P. & Ots-vs-M/s.Pioneer Builders***, in ***Appeal (Civil) No.6114 of 1999***, dated 25th September 2006.

6. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents 1, 2 and 4 and perused the materials available on record.



7.The main suit is for declaration of title and for permanent injunction. In the written statement, the petitioners pleaded that the suit property is a Government poramboke and the trial Court has dismissed the suit only on the ground of non-joinder of necessary parties and proper description of parties have not been stated in the cause title. The appellate Court has rightly held that mere quoting of misdescription of parties should not curtail the right of the parties in the property and also observed that mere misdescription of party can always be corrected provided the mistake was bonafide. The appellate Court also rightly pointed out that the mistake is only on technical ground and the party should not be affected for the technical mistake done by the counsel. Therefore, no infirmity is found in the order passed by the appellate Court, which calls for no interference.

8.In view of the above, this Civil Revision Petition is dismissed. Since the appeal suit is of the year 2014, the Additional Sub-Court, Srivilliputtur, is directed to dispose the appeal suit in A.S.No.7 of 2014 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

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



K.GOVINDARAJAN THILAKAVADI, J.

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To

1.The Additional Sub-Court,
Srivilliputtur.

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

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