



WEB COPY



C.R.P.No.3272 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3272 of 2015

and

M.P.No.1 of 2015

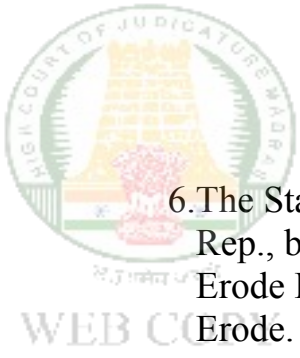
- 1.Janaki
- 2.J.Dhanapal (Died)
- 3.J.Ravichandran
- 4.A.Janaki
- 5.D.Kayethri
- 6.Minor D.Sakthi Mahendran

(Petitioners 4 to 6 brought on record as LR's
of deceased 2nd petitioner viz., J.Dhanapal vide
Court order dated 17.12.2020 made in
CMP.No.13869/2020 in CRP.No.3272 of 2015)

... Petitioners

Vs.

- 1.Chinnammal (died)
- 2.Thulasimani
- 3.Yagavel (Died)
- 4.S.K.Arumugam
- 5.Selvam



C.R.P.No.3272 of 2015

6.The State of Tamil Nadu
Rep., by its District Collector,
Erode District,
Erode.

7. The Revenue Divisional Officer,
Erode District,
Erode.

8. The Tahsildar
Erode Taluk,
Erode District.

9.The Divisional Engineer
State Highways Department,
Erode.

10.Valliammal (died)

11.Y.Gomathi

12.Minor Y.G.Kanisha

13.Minor Y.G.Harisan

14.Tamilarasi

15.Gomathi

16.Senthil Kumar

17.Latha

18.S.P.Thilagavathi

(R-11 to R13 were brought on record as LR's of the deceased R-3 viz., Yagavel made in CMP.No.13860 13862, 13863/2020 and R-14 to R017 brought on record as LR's of the deceased R-10 viz Valliammal made in CMP.No.13872 to 13874 of 2020 in CRP.No.3272 of 2015 vide Court order dated 15.03.2022 and R-1 died, R-18 is brought on record as LR of deceased R1 viz., Chinnammal vide Court order dt 16.02.2024 made in CMP.Nos.1241/2024 in CRP.No.3272 of 2015)

...Respondents



C.R.P.No.3272 of 2015

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 07.07.2015 made in I.A.No.155 of 2015 in O.S.No.341 of 2009 on the file of the learned II Additional District Munsif Court, Erode.

For Petitioners	: M/s.N.Manokaran
For Respondent 1, 3&10	: Died
For respondent 2, 14, 16, 17	: No appearance
For respondent 4 to 9	: Exparte
For respondent 11	: Mr.D.Kanagasundaram
For respondent 15	: Left
For respondents 12 & 13	: Minor represented by R11

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the amendment application filed by the petitioners.

2. The petitioners herein filed a suit for bare injunction restraining the respondents from committing trespass into the suit property and disturbing possession of the petitioners. The petitioners also sought for mandatory injunction directing the respondents 6 to 9 to measure the suit properties as well as properties of respondents 1 to 3 and fix 'F' line for R.S.No.708.



3. Now, the petitioners have come up with amendment application seeking inclusion of 2nd item of suit property. They also seek to include a new prayer for declaration that the 2nd item of suit property is the road margin and the plaintiffs are entitled to use the same as ingress and egress to reach East-West road from their house. The said application was resisted by the contesting respondents on the ground that they filed a suit for declaration and injunction in O.S.No.371 of 2010 on the file of very same Court asserting their title over the property in Survey No.643/4U, on the southern side of the suit property. In the said suit, already the trial is commenced and evidence of the respondents/plaintiffs therein was recorded. It is the case of the respondents that by amendment, the petitioners are attempting to introduce new property and change the character of the suit.

4. The Trial Court dismissed the amendment petition filed by the petitioners on two grounds. Firstly, the Trial Court came to the conclusion that respondents 1 and 3 filed the other suit in O.S.No.371 of 2010 in the year 2010 itself asserting title over the property which is sought to be introduced as item 2 by way of amendment. The petitioners failed to take a defence in that suit as



if the 2nd item of the suit property was road margin. Therefore, after expiry of three years, the petitioners are not entitled to seek declaration in respect of said property. The Trial Court also observed that by way of amendment, the petitioners are trying to introduce a new property in the plaint and the same would amount to change of the subject matter as well as cause of action. On these grounds, the Trial Court had dismissed the amendment application. Aggrieved by the same, the petitioners are before this Court.

5. The learned counsel for the petitioners submitted that in the suit filed by the respondents 1 and 3 in O.S.No.371 of 2010, an Advocate Commissioner was appointed for measuring the property and he filed a report stating the strip of land on the South of suit property is road margin. Based on the Advocate Commissioner's report, the present application has been filed by the petitioners.

6. It is seen from the documents filed in the typed set of papers, the respondents 1 and 3 asserted their title over the property, now sought to be introduced as item 2, as early as 2010 in their plaint in O.S.No.371 of 2010.



C.R.P.No.3272 of 2013

The petitioners could have immediately filed an application seeking amendment of the plaint. As rightly observed by the Trial Court, the petitioners have not given any reason for their failure to seek declaration prayer immediately.

7. Secondly, the petitioners, by way of amendment, wants to introduce 2nd item of the suit property in the schedule to the plaint and seek declaration of title. If the amendment is allowed, it will certainly include a new subject matter. In such circumstances, I do not find any error in the order passed by the Trial Court and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

26.02.2024

Index : Yes / No
Internet : Yes / No
nr

To
The learned II Additional District Munsif Court, Erode.



WEB COPY



C.R.P.No.3272 of 2015

S.SOUNTHAR, J.

nr

CRP.No.3272 of 2015
and
C.M.P.No.21702 of 2021

26.02.2024