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CRP NO.887 OF 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

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THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

CRP NO.887 OF 2023
AND CMP NO.6673 OF 2023

Gopal Chettiar ... Petitioner / Respondent /
Defendant

Vs.

V.S.Selvaraj (Died)

1.V.S.Manoharan
2.V.S.Mahindran
3.Latha
4.Hemashree
5.Karthikeyini
6.Vigneshvaran

... Respondents / Petitioners /
Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Order dated January 2, 2023 passed in I.A.No.01 of 2021 in O.S.No.204 of 2012 on the file of the Principal Subordinate Judge Court, Krishnagiri.

For Petitioner	:	Mr.S.Kanniah
For Respondents 1-3	:	Served – No appearance
For Respondents 4-6	:	Mr.K.Venkatasubban for M/s.Sarvabhauman Associates



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ORDER

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This Civil Revision Petition is directed against the Order dated January 2, 2023 passed in I.A.No.01 of 2021 in O.S.No.204 of 2012 on the file of the 'learned Principal Subordinate Judge, Krishnagiri' [henceforth 'Trial Court' for brevity].

2.The revision petitioner is the defendant and respondents are the plaintiffs in the Suit in O.S.No.204 of 2012 before the Trial Court. For the sake of convenience, the parties will be referred to as per their array before the Trial Court.

3.The case of the plaintiffs is that the plaintiffs filed a Suit in O.S.No.204 of 2012 seeking declaration of title and permanent injunction. In the said Suit, an Advocate Commissioner was appointed and he filed a report on January 23, 2019. At the time of filing of the Suit, the defendant had not encroached upon the Suit Property. Taking advantage of the huge delay in the Advocate Commissioner's proceedings, the defendant in a high-handed manner trespassed into the Suit 'A' Schedule property and started putting up illegal construction



despite the protest made by the first plaintiff. In the Advocate Commissioner's report, it has been specifically stated that the defendant encroached upon a portion of the Suit property and put up superstructure thereon. In these circumstances, the plaintiffs filed an Interlocutory Application during the pendency of the Suit to amend the plaint praying to seek the relief of mandatory injunction and direct the defendant to deliver vacant portion of the Suit 'A' Schedule property after demolition of the superstructure thereon in I.A.No.01 of 2021 in the main Suit.

4.The defendant filed counter denying the allegations made in the Interlocutory Application. He contended thereby that the Advocate Commissioner did not measure the Suit Property properly; that the defendant is entitled to the Suit Property under a Compromise Decree passed in O.S.No.86 of 1948 in Salem Court; that the defendant did not encroach upon the Suit Property; that the four boundaries stated in the plaint is incorrect; that the Suit Property's old Survey number is 99/2, Town Survey number is C11. 8/2; that it is incorrect to state that the Suit Property is situated in SF Nos.160 and 117; that the defendant's property situate in Ward C, Block 11, Survey No.8/2. The defendant has been in possession and enjoyment of the aforesaid property for more than 60



years and thereby, perfected title by adverse possession; that only on seeing the defendant starting to put up construction thereon, the plaintiffs had filed the present Suit; that the plaintiffs ought to have included the prayer for mandatory injunction based on the Advocate Commissioner's report; that the defendant has put up construction in his own property situated in Block No.11, Ward C, Survey Number 8/2. Accordingly, he prayed to dismiss the Interlocutory Application.

5.After hearing both sides, the Trial Court allowed the Interlocutory Application.

6.Feeing aggrieved, the defendant has preferred this Civil Revision Petition.

7.Mr.S.Kanniah, learned Counsel for the revision petitioner submits that the amendments sought for by the plaintiffs are not necessary and if the plaintiffs succeed in the Suit, they can recover possession of the Suit property as per Order XXI Rule 32 of the Code of Civil Procedure, 1908. Accordingly, he prays to allow the Revision Petition.



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8.Mr.K.Venkatasubban learned Counsel for the respondents 4 to 6 has appeared through Video Conferencing Mode and submitted that in the Original Suit, trial has not yet commenced and the amendments sought for in the Interlocutory Application is a pre-trial amendment which is maintainable. He has further submitted that after filing of the report by the Advocate Commissioner only, the plaintiffs got knowledge about the encroachment. There is no infirmity in the Order passed by the Trial Court. Accordingly, he prayed to dismiss the Civil Revision Petition.

9.This Court has considered both side submissions.

10.Considering the nature of the plaint averments and the averments made in the affidavit filed in support of this Civil Revision Petition, this Court is of the view that the amendment sought for in the Interlocutory Application does not alter the nature and character of the Suit. Hence, the Trial Court rightly allowed the Interlocutory Application and that no prejudice would be caused to the defendant by the Order passed by the Trial Court. Hence, this Court is not inclined to allow the



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11. Accordingly, this Civil Revision Petition is dismissed.

However, the revision petitioner / defendant is at liberty to file additional written statement, if any and to raise all the contentions available under law. Considering the age of the Suit, the Trial Court is directed to dispose of the same, on merits and in accordance with law, as expeditiously as possible. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Neutral citation : Yes / No
Speaking Order : Yes / No
TK

To

The Principal Subordinate Judge
Krishnagiri.



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R.SAKTHIVEL, J.

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