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C.R.P.(PD).No.932 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.932 of 2021
and C.M.P.No.7545 of 2021

Kavithamani

... Petitioner

VS

- 1.State of Tamil Nadu,
Rep. by District Collector,
Erode District, Erode.
- 2.The Tahsildar,
Taluk Office,
Perundurai
- 3.The Assistant Director,
Panchayats, Collectorate,
Erode District.
- 4.The Executive Officer,
Karumandisellipalayam Town Panchayat,
Perundurai Taluk,
Erode District
- 5.Kolandhasamy (Died)
- 6.K.Amsaveni
- 7.K.K.Mohankumar



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8.K.K.Shreedhar

... Respondents

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(Respondent – 5 died. Respondent 6 to 8 are brought on record as LR's of the deceased R5 viz., Kolandhasamy vide Court order dated 20.02.2024 made in CMP.Nos.14234 and 14233/2022 in CRP.No.932/2021)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 11.03.2021 in I.A.No.1 of 2021 in O.S.No.30 of 2011 on the file of Sub Court, Perundurai and allow the Civil Revision Petition.

For Petitioner : Mr.S.Kaithamalai Kumaran

For R1 to R3 : Mr.V.Jeevagiridharan
Additional Government Pleader (CS)

For R4 : Ms.Dr.S.Suriya
Government Advocate (CS)

For R6 to R8 : Mr.Abhinav Parthasarathy

For R5 : Died

ORDER

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

2. The petitioner herein filed a suit seeking direction to respondents 1 and 2 to measure the suit properties and fix 'F' line for the suit properties



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based on the title document as well as revenue records. The petitioner also sought for a direction to respondents 1 and 2 to issue patta in favour of plaintiff in respect of suit properties. She also prayed for injunction restraining the respondents 1 to 4 from any way encroaching the suit properties and put up permanent constructions in the suit properties.

3. The suit was resisted by the defendants 1 to 4 by filing a written statement wherein, it was stated by the contesting respondents that a community hall was constructed by the 4th respondent in suit survey number even in the year 2011 and 90% of the construction was over.

4. The present application seeking amendment was filed by the petitioner in the year 2021, seeking to include a prayer of mandatory injunction to remove unlawful illegal construction put up by the 4th respondent in the suit property. In the affidavit filed in support of the amendment application, it was asserted by the petitioner that illegal construction was put up by the 4th respondent pending revision filed by the petitioner relating to another interim order passed by the Trial Court. The



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amendment application was resisted by the contesting respondents mainly on the ground of limitation. It is the case of the respondents that construction of community hall was completed by the 4th respondent as early as 2011 and hence, the present amendment application filed by the petitioner in the year 2021 is hopelessly barred by limitation.

5. In the affidavit filed in support of the amendment application, it was asserted by the petitioner that construction was put up by the respondents taking advantage of pendency of revision petition in C.R.P.No.2612 of 2015. Therefore, it is the specific case of the petitioner that construction was put up by 4th respondent only during the pendency of the civil revision petition, which was disposed on 18.12.2019. However, it is the case of the official respondents that a community hall was put up in the suit survey number even in the year 2011 and therefore, the prayer for mandatory injunction is barred by limitation.

6. Whether the construction was put up by the 4th respondent after 2015 during the pendency of the revision as claimed by the petitioner or in the year



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2011 as claimed by the official respondents, is a matter for evidence and the same can be decided only at the time of trial.

7. In view of the specific stand taken by the parties, this Court feels the amendment shall be allowed with clarification that the amendment will take effect from the date of application and the same will not relate back to the date of plaint.

8. In view of the discussion made above, the Civil Revision Petition stands allowed with a clarification that amendment sought to be introduced by the petitioner will take affect from 11.01.2021 (date of filing of the amendment application) and the same will not relate back to the date of filing of the suit. It is also made clear the respondents are at liberty to file additional written statement raising plea of limitation. No costs. Consequently, the connected civil miscellaneous petition is closed.

06.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

5/6



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S.SOUNTHAR, J.

dm

To

- 1.The Sub Court,
Perundurai.
- 2.The District Collector,
Erode District, Erode.
- 3.The Tahsildar,
Taluk Office,
Perundurai
- 4.The Assistant Director,
Panchayats, Collectorate,
Erode District.
- 5.The Executive Officer,
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Erode District.

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