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C.R.P.(PD)No.4091 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4091 of 2024
and C.M.P.No.22494 of 2024

1.Chennimalaigounder

2.Nallasivam

.. Petitioners

Vs

Natraya Gounder (Died)

P.N.Ramalingam

.. Respondent

(Cause title accepted vide Court order
dated 26.09.2024 made in C.M.P.No.
21223 of 2024 in CRP.SR.No.43220 of
2024 by VLNJ)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 06.02.2024 passed in I.A.No.4 of 2022 in O.S.No.7 of 2019 on the file of the District Munsif-cum-Judicial Magistrate's Court, Kodumudi.

For Petitioners : Mr.V.S.Kesavan



C.R.P.(PD)No.4091 of 2024

ORDER

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O.S.No.7 of 2019 was originally presented for the relief of permanent injunction restraining the defendants from interfering with the possession of the plaintiffs, which is a common pathway belonging to the parties to this revision. Pending the suit, the 1st plaintiff passed away, leaving behind the 2nd plaintiff as his legal heir. Taking advantage of the death of the 1st plaintiff, the defendants allegedly laid a pipeline to an extent of 750 meters on 10.12.2021. When the respondent/2nd plaintiff demanded the defendants to remove the pipeline as it is an obstruction for him to take cattle, tractor and other vehicles on the pathway, the defendants refused to do so. Hence, the plaintiffs filed an application to amend the plaint from the relief of permanent injunction to the relief of mandatory injunction. The application for amendment was received in I.A.No.4 of 2022. After receipt of a counter, the learned trial Judge allowed the application. Hence, this revision.

2. Heard the learned counsel for the petitioners. I have carefully gone through the records.



C.R.P.(PD)No.4091 of 2024

3. A perusal of the papers shows that the suit came to be presented on 13.02.2019. According to the plaintiffs, when the suit was pending, taking advantage of the death of the 1st plaintiff, the defendants have laid a pipeline. As the relief of the permanent injunction required to be moulded to one of mandatory injunction, an application was taken out for amendment.

4. Under Order VI Rule 17 of the Code of Civil Procedure, the Court is entitled to allow an amendment application in order to determine the issues that arise between the parties to a suit. The purpose of allowing an amendment is to ensure that multiplicity of suits do not arise.

5. When the plaintiffs plead that pending the litigation, the defendants have changed the lie of the property, they are always entitled to move an appropriate application for amendment. The character of the suit nor the cause of action of the suit has changed on this stage.

6. Learned counsel for the petitioners pleads that the pipeline had been laid even before the presentation of the plaint. If that be so, it is always open to the petitioners to take such a plea by filing an additional written statement to the amended plaint.



C.R.P.(PD)No.4091 of 2024

7. Suffice to say that the amendment does not change the cause of action nor the frame of the suit. The permanent injunction is sought to be amended to one of the mandatory injunction on account of the events that have taken place pending the litigation. I see no reason to interfere with the order of the trial Court.

8. In the result, the civil revision petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14.10.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

kj

To

The District Munsif-cum-Judicial Magistrate
Kodumudi.



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V. LAKSHMINARAYANAN,J.

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