



WEB COPY



CRP.No.2087 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2087 of 2021
and
CMP.No.15893 of 2021

1.Soundirarajan
2.Prakash
3.Gnanasekarn
4.Jayamurugan

... Petitioners

Vs.

Selvam

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 30.04.2021 passed in IA.No.247 of 2019 in OS.No.147 of 2018 on the file of the District Munsif Court, Chengam.

For Petitioners : Mr.P.Mani

For Respondent : Mr.M.Manoj



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ORDER

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The petitioners herein aggrieved by the order, allowing the amendment application filed by the respondent, has come up with this Civil Revision Petition.

2. The respondent herein filed a suit for declaration and recovery of possession in respect of suit 'B' schedule property. As per the plaint averment, suit 'B' Schedule property is part and parcel of larger extent, which was shown as suit 'A' Schedule property. The respondent/plaintiff filed amendment petition so as to include 'C' Schedule property in the plaint schedule and to include a prayer for recovery of possession of 'C' Schedule. It was their case that suit 'C' Schedule was part of 'A' Schedule and the same was encroached by the petitioners pending suit.

3. The said application was opposed by the petitioners on the



ground that they have been in possession and enjoyment of the said portion of the property for more than 100 years and cause of action alleged by the respondent as if they entered suit 'C' Schedule property pending suit, was imaginary one and hence, sought for dismissal of the amendment application.

4. The trial Court after considering the averments of both the parties came to the conclusion that the encroachment alleged by the respondent and the right of the respective parties over the suit property etc., can be decided only at the time of final disposal based on evidence and the said question could not be decided at this stage. Therefore, the trial Court allowed the amendment application filed by the respondent. Aggrieved by the same, the petitioners are before this Court.

5. The learned counsel for the petitioners submitted that by way of this amendment the respondent is trying to introduce a new cause of action and new subject matter.



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6. He also vehemently contended that the petitioners have been in possession and enjoyment of the property referred to in the amendment application for several decades and therefore, the cause of action alleged by the respondent is an imaginary one and consequently, the amendment application is deserved to be dismissed.

7. In the case on hand, the respondent stated that pending suit, the petitioners herein entered a portion of the suit 'A' Schedule property and encroached the same and the said portion is shown as suit 'C' Schedule property. When the respondent seeks amendment of the plaint on the ground that pending suit the petitioners/defendants encroached a portion of the suit property, it would be appropriate to permit them to amend the plaint seeking appropriate relief. The allowing of the amendment application at this juncture will prevent the multiplicity of proceedings. When the respondent is entitled to file a separate suit on the cause of action, he can very well be permitted to



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amend the plaint so as to include the relief based on the said cause of action. When the relief sought for by way of amendment is relating to a portion of the subject matter of the suit, whether the cause of action alleged by the respondent is true or not is a matter to be decided at the time of final disposal as rightly observed by the trial Court.

8. Therefore, I do not find any irregularity or illegality in the order passed by the trial Court allowing the amendment application. Consequently, the Civil Revision Petition is dismissed. It is needless to say that the petitioners are entitled to file additional written statement after amendment of the plaint within a period of four weeks from the date of amendment. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Neutral Citation Case : Yes/No



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S.SOUNTHAR , J.

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To

The District Munsif Court, Chengam.

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