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C.R.P. (PD) No.3502 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.3502 of 2024
and C.M.P.No.18968 of 2024

A.Vijayakumar

.. Petitioner

Versus

1.Chandirakanthi
2.S.Sarathamani
3.T.Bagyalakshmi
4.M.Kamalaveni
5.Murugesan
6.Sundarrajan

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 03.11.2023 passed in I.A.No.2 of 2023 in O.S.No.3 of 2017 on the file of the District Munsif, Avinashi.

For the Petitioner : Mr.M.Marudhachalam



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ORDER

This Civil Revision Petition challenges the order passed by the learned District Munsif, Avinashi in I.A.No.2 of 2023 in O.S.No.3 of 2017 dated 03.11.2023.

2. O.S.No.3 of 2017 is a suit filed for a declaration and permanent injunction with respect to a pathway. The case of the plaintiff is that the properties which abuts the suit schedule mentioned properties are her ancestral properties. The properties were partitioned among her family members by way of a registered partition deed on 03.12.1999. The parties to the said document are the plaintiff, her father and her siblings. Subsequently, her father passed away in the year 2004. Therefore, the plaintiff and her sisters entered into an another partition deed in the year 2015.

3. Alleging that the Civil Revision Petitioner/1st defendant is interfering with her right of a pathway which runs east - west for 24 feet and east - south for another 700 feet and going further turns south and extends to



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east west 24 feet and north south 150 feet leading to her land, she presented the suit.

4. On being served with the summons, the Civil Revision Petitioner filed a written statement. He would plead that the plaintiff has no right, title or interest over the alleged pathway and he would plead that the plaintiff has an alternate pathway to her property. He would state that the pathway which runs to the plaintiff is property's situated in Survey Nos.242/1 and 243/5.

5. Pending the suit, the plaintiff moved an application for injunction in I.A.No.11 of 2017. The said application came to be dismissed by the Trial Court on 04.03.2023 stating that the plaintiff had not provided the details of the Survey Numbers over which the suit pathway runs. Subsequently, an Advocate Commissioner was also appointed, and he also submitted a report together with a plan. In order to rectify the situation, the plaintiff filed an application in I.A.No.2 of 2023 to amend the plaint. The learned Judge, after receipt of a counter from the Civil Revision Petitioner allowed the application. Hence, this revision.



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6. Heard the learned counsel for the petitioner.

7. The learned counsel for the petitioner would contend that the amendment application ought not to have been allowed because it suffers from delay and laches. He would state that the plaintiff presented the suit in the year 2017 and would wait till 2023 in order to move an amendment application, which was only after the dismissal of the injunction petition and after the report of the Advocate Commissioner. He would plead that the plaintiff, as pointed out, is entitled to alternate pathway and therefore, she has no right to claim the pathway running over the property of the 1st defendant. In addition, he would point out that the Trial Court, while dismissing the injunction application, has stated that the details of the Survey Numbers had not been furnished. Instead the filing an application immediately, with a delay by four months, the said application came to be presented.

8. In order to substantiate the submissions of the learned counsel for the petitioner, he relied upon the Judgments in *Asian Hotels (North) Limited*



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Vs. Alok Kumar Lodha and Others (2022) 8 Supreme Court Cases 145 and ***Basavaraj Vs. Indira and Others*** (2024) 3 Supreme Court Cases 705. On these grounds, he would plead that the revision deserves admission and the suit ought to be stayed.

9. I have carefully gone through the records and have considered the arguments of the learned counsel for the petitioner.

10. At the outset, I should point out, the suit is yet to see the light of the trial. A pre-trial amendment deserves to be considered liberally. This is because, the proviso which restricts the power of the Court to consider the amendment is yet to kick in.

11. A reading of the amendment shows that the character of the suit or the frame of the suit has not been changed. In so far as the limitation is concerned, every time the right of a person to use the pathway is obstructed, it give a rise to a new cause of action. The plaintiff has not changed the suit relief to claim any other right. By virtue of granting the amendment, the suit



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does not change to any other character, but continues to be a suit, presented for a right over the pathway. All that the amendment does is clarifying the pleadings that were originally raised by the plaintiff, when she presented the suit in the year 2017. The amendment has included the Survey Numbers of the properties, which had not been furnished at the time of presentation of the plaint. The amendment is clarificatory in nature and therefore, the vise as pleaded by the learned counsel for the petitioner viz., of delay and latches cannot be applied to the present case.

12. In fact, the Supreme Court in ***LJ Leach & Co. Ltd., Vs. Jardine Skinner*** (1957 SCC OnLine SC 68) has held that a Court should normally refuse an amendment, if a fresh suit on the amended claim would be barred by limitation on the date of application. However, it is only a factor that has to be taken into account while exercising the discretion to grant the amendment. Limitation does not affect the power of the Court to order it, if it requires in the interest of justice. Furthermore, the plea that the plaintiff has an alternate pathway is not foreclose by virtue of this amendment. It is always open to the defendants to show that the plaintiff does not have right as claimed by her. The



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learned Trial Judge having exercised his discretion, I am not inclined to interfere with the same in the revision.

13. Turning to the two Judgments that has been relied upon by the learned counsel for the petitioner, a careful perusal of the Judgments would show that by virtue of the amendment that had been granted in those cases, the very nature of the suit was changed. If there is a change in the nature of the suit certainly, the Court would have to scrutinise the amendment even more carefully.

14. As pointed above, in the present case, the suit continues to be a claim by the plaintiff for her right over a pathway. In fact, the measurements that has been given in the plaint for the pathway has been retained in the amendment application. Therefore, I do not find any reason to interfere with the order of the learned District Munsif, Avinashi, in I.A.No.2 of 2023 in O.S.No.3 of 2017.



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15. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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To

The District Munsif, Avinashi.



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V.LAKSHMINARAYANAN, J.,

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