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C.R.P. No. 3978 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 3978 of 2024
and
C.M.P. No. 21793 of 2024

1. Kandhasamy

2. Lakshmi

... Petitioners /
Respondents 1 and 2 /
Defendants 1 and 2

Vs.

1. Valliyathaal

2. P.Nallasamy

... Respondents 1 and 2 /
Petitioners /
Plaintiffs

3. K.R.Duraisamy

... 3rd respondent /
3rd respondent /
3rd defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 31.07.2024 made in I.A. No. 316 of 2023 in O.S. No. 239 of 2017 on the file of the learned District Munsif Court, Kangayam.



C.R.P. No. 3978 of 2024

for Mr. N.Manoharan

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ORDER

The civil revision petition is at the instance of the defendants.

2. The plaintiffs presented a suit for injunction over a pathway. It was received as O.S. No. 239 of 2017. Pending the suit, an Advocate Commissioner was appointed in I.A. No. 1058 of 2017. He submitted a report to the Court showing that to an extent of 425 feet, the defendants have obstructed the pathway. Therefore, the plaintiffs took out an application in I.A. No. 316 of 2023 seeking for an amendment of the plaint with an additional prayer of mandatory injunction. The said application was allowed. Hence, the revision.

3. Heard Mr. Ramanan for the civil revision petitioner.

4. Mr. Ramanan would submit that the amendment is barred by time. According to him, the Advocate Commissioner had submitted a report as early as 2017. But the amendment application came to be filed only in the year 2023. According to him, the cause of action arose in the year 2017 itself and filing the application in the year 2023 is barred by time.

5. I have gone through the records and carefully considered the



C.R.P. No. 3978 of 2024

arguments of Mr. Ramanan.

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6. The cause of action for use of a pathway arises every day that the plaintiffs' right is obstructed by the defendants. According to the plaintiffs, they are entitled to enjoy a pathway that has been shown in the suit schedule mentioned property. On account of the obstruction, they took out an application for appointment of an Advocate Commissioner. The Advocate Commissioner has also submitted a report saying that subsequent to the presentation of the plaint, the defendants have obliterated the pathway. In order to rectify the said situation, they have come forward with an application for mandatory injunction. The said relief has been accepted by the learned Trial Judge. It is not as if in all cases where an amendment is ordered, where the amendment is seemingly barred by time, the said application should be dismissed. Limitation being a mixed question of law and fact, if a plea is raised by the defendants in his additional written statement that the relief is barred by time, I am certain that the District Munsif Court, Kangayam would frame an issue and answer the same accordingly. The issue being one relating to a pathway and each time the plaintiffs' right is obstructed, it gives him a cause of action to file a suit, I am not inclined to accept the arguments of Mr. Ramanan.



C.R.P. No. 3978 of 2024

7. In the light of the above discussion, the civil revision petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

30.09.2024

Index : Yes / No

Speaking order : Yes / No

NCC : Yes / No

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To

The District Munsif Court, Kangayam.



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C.R.P. No. 3978 of 2024

V.LAKSHMINARAYANAN, J.,

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C.R.P. No. 3978 of 2024

30.09.2024