



C.R.P(MD).No.177 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.177 of 2023

in

C.M.P(MD)No.840 of 2023

1.Shri Balaji Pandithar Sathiram,
Adhirampattinam represented by its
Hereditary Trustee
Vivek Harinaryanan,

2.Lalitha,

3.Viji ... Petitioners / Petitioners / Appellants

Vs

1.Tamil nadu Government,
represented by its Director Collector,
Thanjavur,
Having Office at
Thanjavur Town and District.

2.The Forest Officer,
Nagapattinam,
Having his office at
Nagapattinam Town and District.



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3.The Forest Range Officer,
Muthupettai,
Having his office at
Muthupettai Town,
Thiruvarur District.

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.29 of 2022 in A.S.No.40 of 2004 dated 05.01.2023 on the file of the Subordinate Judge, Pattukottai.

For Petitioner : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.D.R.Murugesan

For Respondent : Mr.A.Sivanu Pandian
Government Advocate (Civil)

ORDER

This Civil Revision Petition is filed to set aside the order made in I.A.No.29 of 2022 in A.S.No.40 of 2004 dated 05.01.2023 on the file of the Subordinate Judge, Pattukottai.

2. The facts in brief are that the suit in O.S.No.9 of 2001 was filed by the plaintiff, against the Government of Tamilnadu, seeking the relief



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of declaration that the suit property belongs to them absolutely and for permanent injunction. That suit was dismissed. Against which A.S.No. 40 of 2004 was preferred before the Subordinate Court, Pattukottai and that was also allowed, granting declaration and consequential injunction, on 27.04.2005. After that Second Appeal was preferred by the State Government in S.A.(MD)No.979 of 2007. The same was disposed of with the following observation and direction:

"16. For all these reasons, this Court is of the view that the judgment of the First Appellate Court in decreeing the suit is liable to be interfered with. Accordingly, the judgment and decree of the First Appellate Court in A.S.No.40 of 2004, dated 27.04.2005 is set aside and the matter is remanded back to the First Appellate Court to try the appeal afresh by taking note of the fact that the respondents herein had not laid any claim over the area declared as forest in the Tamil Nadu Gazetted Notification, dated 23.02.1990. Find out whether the proceedings under the Act 26 of 48 is binding on the plaintiff shall also can be gone into by the First Appellate Court for deciding the issue. The First Appellate Court also may give an opportunity to both sides to establish their rights. However, it is made clear that over the area declared as forest in the Tamil Nadu



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Gazetted Notification, dated 23.02.1990, the plaintiff cannot have any right and in fact the civil Court cannot go into this aspect, when the lands were declared as reserved forest as per Section 5 of the Tamil Nadu Forest Act, 1882. The First Appellate Court shall dispose of the suit as expeditiously as possible not later than one year from the date of receipt of a copy of this judgment. Since the matter is remanded back, the substantial questions of law framed by this Court are left open. The Registry is directed to send back all the papers to the First Appellate Court forthwith."

3. Now the matter is back to the First Appellate Court namely the Subordinate Court, Pattukottai. During the proceedings, I.A.No.29 of 2022, was taken out by the revision petitioner under Order 6 Rule 17 to amend the plaint with the averments that in the schedule of the plaint, the suit survey number is mentioned as 529 measuring about 212.32 acres. Later, that was sub divided into various subdivisions. Now the subject matter of the property is comprised in S.No.557. Various lands belong to various departments, are now comprised in S.No.529 measuring about 52 Acres. That was informed to the second Appellate Court. In view of the same, the plaint is required to be amended. That was resisted by the



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respondents by filing a written statement on 22.02.2002, that the property comprised in S.No.529 measuring about 861.88 acres was taken over by the Government by the Act 26/1948. After lapse of 20 years, now the petition is filed. No document is produced to support the amendment. That came to be dismissed by the Appellate Court by pointing out the remand order passed by the Second Appellate Court. Against which, this Civil Revision Petition is preferred.

4. Even before the Second Appellate Court, as mentioned above, it was submitted by the revision petitioner that they are not making any claim over the property which belongs to various department. Now they want to amend the plaint accordingly. In the opinion of this Court, the amendment will not alter the nature or character of the suit. Since the revision petitioner wants to make clarification over the claim in respect of the property taken over by the various department, now they want the plaint to be amended. To support the claim of amendment 'A' Register copy is also produced. I find that the property comprised in Survey No. 529 is declared as Reserve Forest. S.No.557 is recorded as Uppalam. Since the claim of the revision petitioner is supported by documents, now



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produced before this Court, the order of the Appellate Court is liable to be set aside.

5. Accordingly, this Civil Revision Petition stands allowed and the order in I.A.No.29 of 2022 in A.S.No.40 of 2004 dated 05.01.2023 passed by the Subordinate Judge, Pattukottai, is set aside, by permitting the petitioner to amend the plaint as prayed for in the petition. The learned Subordinate Judge, Pattukottai, may decide the matter in the light of the remand order passed in S.A.(MD)No.979 of 2007 dated 31.03.2021. No costs. Consequently, connected miscellaneous petition stands closed.

05.03.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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- 1.The Subordinate Judge, Pattukottai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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