



C.R.P. (MD) No. 1474 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 1474 of 2024
and
C.M.P. (MD) No. 8722 of 2024

V.Selvanayagi

... Petitioner/
Plaintiff

-VS-

1.Sonai
2.Lingam Poosari
3.K.Selvam
4.K.Moorthy

... Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records to the fair and decreetal order passed by the learned District Munsif, Vadipatti in I.A.No.04/2023 in O.S.No.01/2017 dated 29.02.2024 and set aside the same by allowing the civil revision petition.

For Petitioner : Mr.M.Karuppasamy



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ORDER

This Civil Revision Petition is directed against the order of the learned District Munsif, Vadipatti, dated 29.02.2024 in I.A.No.4 of 2023 in O.S.No.1 of 2017. By the said order, the amendment petition filed by the petitioner was dismissed by the Trial Court.

2. The learned Counsel appearing on behalf of the petitioner, taking this Court through the order passed by the Trial Court, would submit that apart from the lane for which originally the suit was made, even in the Commissioner's report, he has found that the defendant has encroached and has put up a bathroom in the plaintiff's land. That piece of land and that encroachment is also now sought to be made as a subject matter by including a paragraph in the plant. This apart, the defendant has encroached another extent of 21 x 5 feet which is also inter parties only. Therefore, only to avoid multiplicity of proceedings, when the plaintiffs have filed the amendment, the Trial Court ought to have allowed the same.

3. I have considered the submissions made by the learned counsel for the petitioner and perused the material records of the case. The suit is distinctly and clearly filed in respect of a pathway which is mentioned in the schedule to the plant. The 5 ½ cents of land or 21 x 5 feet land are all certainly not part of the



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said pathway which was the original subject matter of the suit. The parties concluded their pleadings and the issues are framed and both sides let in evidence on the pleadings and the case is at the argument stage. If at this stage, the plaintiff introduces these two amendments, the very nature of the suit itself will change. I am of the view that even though parties are one and the same, the subject matter is totally different. The subject matter as to 5 ½ cents and also 21 x 5 feet land are totally different and distinct from the original cause of action which is disclosed in the plant. Therefore, if by any subsequent action, the other pieces of the land belonging to the plaintiff is also encroached by the defendant, nothing prevents the plaintiff from instituting a separate suit in respect of the same and the dismissal of this amendment order will not come in the way. As and when such suit is filed, the same will be entertained by the concerned Court on its own merit subject to the law of limitation and the merits.

4. With the above observations, confirming the order passed by the Trial Court this Civil Revision Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.07.2024

NCC : No
PKN



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D.BHARATHA CHAKRAVARTHY, J.

PKN

To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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