



C.R.P(MD).No.2736 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 12.03.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.2736 of 2015

and

M.P.(MD).No.2 of 2015

- 1.B.Yesudhasan
- 2.Y.Preman
- 3.Y.Baleswari
- 4.Y.Usha
- 5.Y.Sura
- D.Bai (Died)
- G.John
- 8.G.Jepanesan
- 9.G.Rajan
- M.Sornamma
- 11.S.Lalitha
- 12.S.Surendran
- 13.S.Vijayan
- 14.Sajitha
- 15.Aashish John
- 16.Riya John

... Petitioners

(Petitioners 14 to 16 are brought on record as
LRS of the deceased 7th petitioner vide Court
order dated 30.06.2023 made
in C.M.P.(MD).No.7643 and 7648 of 2023)

Vs.

G.Damodharan @ Mani

2.J.Raju

1/9



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3.P.Suseela Bai

P.Balamma

5.P.Sarojini

6.P.Baby

7.P.Jerson

8.P.Mary

9.P.Brite

10.P.Glory

11.P.Stephenson

12.P.Lilly

13.Babu

14.Ramani

15.Sajitha

16.Suresh

... Respondents

(Respondents 14 to 16 are brought on record
as LRS of the first respondent/deceased vide
Court order dated 01.02.2024 made
in C.M.P.(MD).Nos.7649 to 7651 of 2023)

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow the Civil Revision Petition and set aside the fair and decreetal order dated 30.09.2013 made in I.A.No.3 of 2013 in A.S.No. 119 of 2005 on the file of the learned Subordinate Judge, Kuzhithurai.



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For Petitioners : Mr.P.Thiagarajan

For Respondents : Mr.J.Anandhavalli for R3

R1 and R4 died

No appearance (for R7, 10 to 12)

ORDER

The petitioners who are the plaintiffs filed this civil revision petition challenging the dismissal order of the amendment petition under order 6 Rule 17 of C.P.C., dated 30.09.2013 made in I.A.No.3 of 2013 in A.S.No. 119 of 2005 by the learned Subordinate Judge, Kuzhithurai.

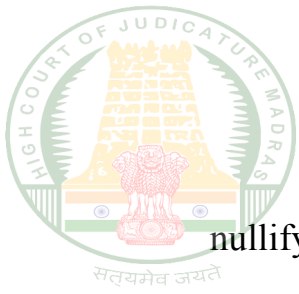
2.The plaintiffs filed a suit in O.S.No.636 of 1983 on the file of the learned District Munsif, Kuzhithurai seeking declaration and injunction and demarcation of the properties mentioned in the suit scheduled properties. The respondents/defendants 3 and 4 filed written statements claiming the title and ownership of the property in Survey No.276/1. The plaintiffs specifically pleaded that they claimed declaration and injunction relating to the R.S.No.276/5 (old Survey No.2976). Even though the defendants did not claim any right over the Survey No.276/5, they contended in the written statement that they have possession over the property in R.S.No.276/5(Old



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Survey No.2976). Both the parties adduced the evidence and the learned trial judge decreed the suit in respect of the declaration and injunction filed by the plaintiffs. So far as the demarcation is concerned, the learned trial Judge dismissed the suit. Aggrieved over the dismissal of demarcation of suit, the plaintiffs filed an appeal before learned Subordinate Judge, Kuzhithurai, in A.S.No.119 of 2005. During the pendency of the appeal, the plaintiffs filed an petition in I.A.No.341 of 2005 to appoint an Advocate Commissioner to measure the property and ascertain the R.S.No.276/5 (old Survey No.2976) and the said application was allowed and the Advocate Commissioner filed report. In the report, it is stated that the plaintiffs' property is situated in R.S.No.276/1. Therefore, the plaintiffs filed the petition in I.A.No.12 of 2010, seeking amendment in the grounds of the appeal and the same was dismissed. Against which, the plaintiffs filed civil revision petition in C.R.P.(MD).No.2052 of 2011 and the same was dismissed. Subsequently, the plaintiffs filed amendment petition in I.A.No.3 of 2013 in A.S.No.119 of 2005 and the same was dismissed. In this petition, the defendants filed a counter and specifically pleaded that allowing the amendment will change the entire cause of action and the nature of suit filed by the plaintiffs. Further, they alleged that the amendment petition would



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nullify the decree passed in O.S.No.636 of 1983. The learned appellate judge after considering the counter affidavit filed by the respondent/contesting defendants dismissed the application on the ground that allowing the amendment would amount to the setting aside the decree passed in O.S.No.636 of 1983. Assailing the same, the learned counsel for the plaintiffs filed this revision stated in the memorandum of grounds.

3.The learned counsel appearing for the plaintiffs submitted that the amendment petition was filed after the obtainment of the physical feature stated by the Advocate Commissioner. In the interest of the justice, the amendment petition ought to have been allowed by the learned trial Judge. He further submitted that suit is of the year of 1983 and at this juncture, asking the parties to file fresh suit will cause prejudice to both the parties. Hence, he seeks to allow this revision.

4.The learned counsel appearing for the respondents/contesting defendants submitted that the learned appellate judge correctly took a view that allowing the amendment would nullify the decree and also it will change the cause of action. Further, it is stated that without amending the



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relevant paragraph of the plaint relating to the averment made in the R.S.No.276/5 (old Survey No.2976). This amendment petition can not be allowed. Hence, he seeks for dismissal of this petition.

5.This Court considered the rival submission made by the the learned counsel appearing on either side and perusal of the materials available on record and the impugned order passed and other documents filed by the both the parties.

6.Inadvertently, the mistake has happened while filing the plaint relating to the enjoyment of the suit property. The same was found at the time of advocate commissioner's inspection appointed during the course of the appeal suit. Hence, the plaintiff filed an application under order VI rule 17 with a prayer to amend the R.S.No.276/5 (old Survey No.2976) in the plaint scheduled properties. The trial Court has specifically granted decree in respect of the R.S.No.276/5 (old Survey No.2976) relating to the declaration and injunction. Further, it is the specific case of the contesting defendants that they are enjoying the property in R.S.No.276/5 (old Survey No.2976). In view of the evidence adduced by the both the parties more



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particularly, the plaintiffs are enjoying the property in R.S.No.276/5 (old Survey No.2976) and the learned trial judge granted decree in respect of the same. But, after the appellate Court, appointed the Advocate Commissioner, the plaintiffs came to know that the property is situated in R.S.No.276/1. In the said circumstances, the amendment petition was filed. As rightly observed by the learned appellate judge allowing the amendment petition would nullify the decree passed in O.S.No.636 of 1983 in respect of the relief of declaration and injunction. Further, the amendment also not made relating to the transfer of the title in respect of 276/1, when there was a dispute relating to 276/1, which is according to the contesting defendants that they are in possession of the property. Allowing the amendment would change the cause of action as well as nature of the suit. Both the parties adduced evidence relating to R.S.No.276/5 (old Survey No.2976). even the evidence of P.W.1 also is relating to R.S.No.276/5 (old Survey No.2976). In the said circumstances, the amendment petition dismissed by learned appellate judge is in accordance with law. Hence there is no merit to interfere with the order of the appellate judge as well as the learned trial judge.



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7. Accordingly, this civil revision petition is dismissed. Further, the

learned appellate judge is directed to decide the issue on merits without being influenced by the observation made in this petition. No costs. Consequently, the connected miscellaneous petition is closed.

12.03.2024

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

To

1. The learned Subordinate Judge,
Kuzhithurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.,

vsg

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