



C.R.P (PD) No.214 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2025

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA.J

C.R.P (PD) No.214 of 2025

and

C.M.P.No. 1411 of 2025

Jayarama Naikcer (died)

1.Banumathi

2.Thulasikannan

3.Kalpana

4.Revathi

... Petitioners

VS.

1.Umapathy

as Power of Attorney Agent of Namasivayam

2.Megalammal

... Respondents



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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 16.10.2024 made in IA.No.103 of 2015 in OS.No.161 of 2012 on the file of the District Munsif, Sholinghur, Ranipet District.

For Petitioners : Mr. A.Gouthaman

For Respondents : No Appearance.

ORDER

The defendants 3 to 6 are the revision petitioners herein challenging the order passed by the learned District Munsif, Sholinghur in IA.No.103 of 2015 in OS.No.161 of 2012. The said application has been filed by the plaintiffs to amend the plaint. The brief facts which has led to the filing of this revision petitioner is herein below set out and the parties are referred to as the plaintiffs and defendants.



WEB COPY 2. The plaintiffs had filed the suit OS.No.161 of 2012 on the file of the District Munsif, Sholingur, seeking the following relief:

“(a)declaring the title of the 1st plaintiff in respect of A schedule property marked in red colour portion as AB in the plaint plan and;

(b)Granting a permanent injunction restraining the defendants, their servant and agents from interfering in any manner with the 1st plaintiff's A schedule property marked AB in red colour.

(c)granting mandatory injunction directing the defendant to restore the demolished portion of A schedule wall to its original condition failing which through process of Court;

(d)declaring the title of the 2nd plaintiff in respect of B schedule property marked as BGH in red colour portion.



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(e)Granting permanent injunction restraining the defendant his agents and servants with the 2nd plaintiff's possession and enjoyment of B schedule property in any manner.

(f)directing the defendants to pay to the plaintiffs the costs of the suit.

3. It is the case of the plaintiffs that the property which is marked as ABCD in plaint plan belonged to one S.Namasivayam and the 1st plaintiff is the registered power agent of the said S.Namasivayam. The 2nd plaintiff is the wife of the 1st plaintiff. The said S.Namasivayam had on 07.06.1998 nominated the 1st plaintiff as his power agent giving him all powers to sell, mortgage or otherwise deal with the property.

4. On the date of the power deed possession was also delivered to the 1st plaintiff and he has been in possession and enjoyment of the same which includes the eastern wall marked as AB and morefully



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described as A schedule property. It is the further case of the plaintiffs that the property marked as DEFGH in plaint plan also belonged to the said S.Namasivayam and he sold the property to the 2nd plaintiff under a registered sale deed dated 21.04.1997 after receiving full consideration from her. The deed was also registered and possession delivered to the purchaser, the 2nd plaintiff. The respective plaintiffs have been in possession and enjoyment of the properties.

5. The wall which is shown in the plaint plan described as the B schedule wall is coloured red in the plan. The same is constructed with mud and mortar and is over 50 years old. The defendants had no right to the said wall.

6. While so, on 01.11.2012, the defendant commenced to demolish the AB wall despite protest by the 1st plaintiff. A police complaint was given calling upon the Police to stop demolition. However, no action was taken by them and the plaintiff was advised to



seek remedy through Civil Court. Since the defendants were attempting to demolish the B schedule Wall the 2nd plaintiff has also jointed in instituting this suit for declaration and permanent injunction in respect of the B schedule wall.

7. The plaintiffs would further submit that the defendants had demolished the A schedule Wall to the height of about 5 feet from the top and removed tiles in the 1st plaintiff's house with the help of the defendant's workman. This has resulted in the irreparable hardship and loss to the plaintiffs. Therefore, they have come forward with the suit in question.

8. The 1st plaintiff would contend that the North - South measurement of the ABCD portion is 77 feet and East - West is 27 feet. However, the total area measures 2241 sq.ft., and the North - South is 83 feet and East - West is 27 feet. The plaintiff is also entitled to this extent. The plaintiffs have therefore come forward to institute the suit



for the relief stated supra.

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9. The defendants in their written statement would deny the allegations contained in the plaint as also the measurements. It is the case of the defendants that the A schedule property mentioned in the written statement belonged to Rajagopal Naidu and others who had sold the same to S.Rajammal, the wife of Samba Moorthy Ayyar under a registered sale deed dated 27.04.1957. The possession was handed over to Rajammal pursuant to the sale deed.

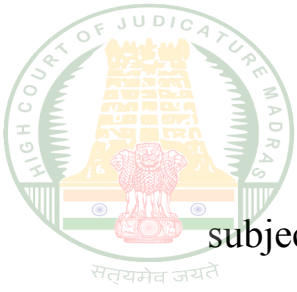
10. Thereafter, she had sold the B schedule property mentioned in the written statement to the defendant under a registered sale deed dated 28.09.1984 after receiving a valid consideration and had put up the defendant in possession of the B schedule property mentioned in the written statement. The defendant would further submit that even at the time of the purchase the East and West wall of the tiled houses in the B schedule property mentioned in the written statement belonged to



Rajammal. Therefore, she had included the same in the sale deed in favour of the defendant. The 1st plaintiff has no right to the Western wall of the B schedule property house mentioned in the written statement.

11. It is the further case of the defendant that Rajammal had also sold the C schedule property mentioned in the written statement to one K.P.Gopala Krishnan under a registered sale deed dated 29.08.1994 for a valid consideration and possession was handed over to them. Here again the East and West walls and Southern walls belonged to Rajammal. Therefore, the plaintiff had no manner of right and title to the aforementioned walls. The said S.Namasivayam also did not have any right over the same. In short the defendants claimed exclusive right to the walls. The written statement had been filed on 30.05.2013.

12. When the suit was ready for trial the plaintiffs have come forward with the application for amending the plaint which is the



subject matter of the present revision. In the affidavit filed in support

of the said application the plaintiffs would seek to amend the plaint to include pleadings with reference to easementary right and consequently to seek declaration of this easementary right. The said petition was resisted by the defendants by contending that the Advocate Commissioner had earlier inspected their property and had submitted a report that the plaintiffs tiled house's rafters, beams never rested on AB wall. Therefore, the allegation that these rafters and beams were resting on the AB walls for over 50 years is absolutely false.

13. The Advocate Commissioner has also submitted a report that the BGM wall is also not existing in the plaintiffs property. The defendant in order to construct a terraced house wanted to demolish the disputed Wall belonged to them. In view of this false suit that has been instituted the defendant is not able to raise his construction.



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WEB COPY 14. After filing a suit for declaration of their right and title over AB and BGM Wall shown in the plaint plan after the Advocate Commissioner had submitted a report stating that the disputed wall is not situate in the plaintiff's property, the plaintiffs come forward with the above application.

15. The defendants would further submit that the application is nothing but a sheer abuse of process of Court. The defendant had sustained heavy loss as the building materials that they had purchased cannot be used.

16. The learned District Munsif, Sholinghur, after considering the records and the arguments of the counsels had ultimately allowed the said application. The learned Trial Judge held that the petitioners who had given up their claim of declaration of their title are now claiming easementary right. The learned Judge also held that the plea was not



mutually destructive. The learned Judge also stated that the Advocate

Commissioner's report that the rafters and beams are not resting on the Wall as stated in the plaint can be considered only at the time of trial and not at the amendment stage. Therefore, in order to avoid multiplicity of proceedings the petition should be allowed.

17. Challenging the said order the defendants are before this Court.

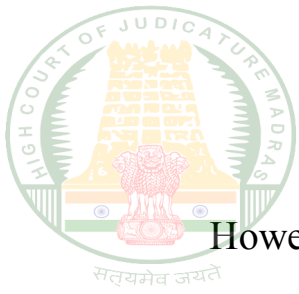
18. It is the case of the defendants that the plaintiffs had in the year 2012 had filed a suit for declaration and an application for appointment of Advocate Commission which is filed along with the plaint had been ordered and an Advocate Commissioner submits a report stating that the allegation of the plaintiff that beams and rafters rest on the wall is totally unfound. Therefore, the plaintiffs has come forward with an application in the year 2015 for amendment of the relief.



WEB COPY 19. The case of the plaintiffs is that their house rest on the Wall.

In the affidavit filed in support of the amendment petition the plaintiffs have contended that the Advocate Commissioner has filed two plans. A perusal of which would indicate that the A schedule property which is coloured red is situate in the defendant's property. However, the plaintiffs and his principal have contended that for over 60 years the tiles, roof of the plaintiff's house has been resting and that he intends to seek easementary right which is a total deviation from the earlier pleadings.

20. A perusal of the document and the report of the Advocate Commissioner would indicate that an entirely new case has been put forward by the plaintiffs. The statement of the learned Trial Judge that the pleas are not mutually destructive cannot be countenanced since in the earlier plaint the plaintiff's claim was based on the documents of title and it is the plaintiff's case that the sale deed included the Wall.



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However, in the amendment the plaintiffs have given a go by to the same and would submit that they are entitled to a declaration on the basis of the long use and enjoyment and thereby claiming prescriptive right. Further, the Advocate Commissioner has clearly stated that no portion of the plaintiffs' house rests on the wall. Therefore, the question of the easement is also not available.

21. Accordingly, the Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

03.04.2025

Index: Yes/No
Internet: yes/No

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To
The District Munsif,
Sholinghur,
Ranipet District.



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