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C.R.P.No.779 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.03.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No.779 of 2025
&
C.M.P.No. 4597 of 2025

1.R.Arumugam

2.M.Kandasamy

3.K.Palanivelu

...Petitioners

Vs.

Singaravelu

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 09.08.2024, made in IA.No.5 of 2023 in OS.No.284 of 2016, passed by the Additional District Munsif Court, Tiruchengode.



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For Petitioners : Mr. B.Jawahar

For Respondent : No Appearance.

ORDER

Challenging the dismissal of their application seeking amendment of the plaint by the Additional District Munsif, Tiruchengode, the plaintiffs are before this Court. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Court below.

2. The plaintiffs filed the above suit seeking permanent injunction restraining the defendant, his men, servants, agents from in any way interfering with the plaintiffs' possession and enjoyment of the suit property in particular from trespassing and forming 13 feet breadth east west Cart Track.

3. The plaintiffs' case is that the suit property which is originally a Natham Land was purchased by the plaintiffs' paternal grandfather,



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Perumal on 07.12.1929 within specific boundary, namely, North by Seeragan's land and the house of Mari, East by Water tank, South by Natham Porambokku and West by Vadaman's vacant land, measuring East West 24 Muzham and North South 60 Muzham.

4. It is their case that the said Perumal purchased another house plot which is not the subject matter of the suit. The said Perumal died 40 years ago leaving behind him surviving 3 sons, Marimuthu, Kandasamy and Ramasamy. All of whom are no more. The 1st plaintiff is the only son of Ramasamy, the 2nd plaintiff is the son of Marimuthu and the 3rd plaintiff is the son of Kandasamy.

5. The suit property is in possession and enjoyment of the plaintiffs 1 and 2 and the 3rd plaintiff is residing in the other house in NS.No.217/5. The plaintiffs 1 and 2 would submit that they are residing with their family members in the suit property and in their absence the 3rd plaintiff is taking care of the suit property and living in S.No.217/5.



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6. It is their case that the defendant who has no right over the suit property with the help of the revenue authorities attempted to occupy S.No.217/9 for which they are taking steps to obtain patta. It is the further case of the plaintiffs that S.No.217/3 is a common lane for the owners of the lands situate in S.Nos.217/1, 217/2, 217/8, 217/4, 217/5, 217/6, 217/7 and 217/14 to reach their house and lands. For S.No.217/9 there is a pathway on the west of it which is a circuituous way. The defendant is therefore claiming a right to a non existent cart track in S.No.217/7, 217/6 to reach S.No.217/3. The defendant has been making steps to form this cart track.

7. On 04.11.2016 the defendant along with his men and servants attempted to trespass into the suit property to form the cart track. With very great difficulty the attempt was stopped but the defendant have threatened to form the lane. Therefore, the plaintiffs have come forward with the suit in question.



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8. A written statement has been filed by the defendant in which he has admitted that S.No.217/3 is common lane but would deny the fact that it is only for persons owning the land in S.Nos.217/1, 217/2, 217/8, 217/4, 217/5, 217/6, 217/7 and 217/14. The defendant would submit that the Government has also issued patta in favour of defendant for the land in S.No.217/9 for plot No.1 to an extent 0.02 cents. The lands in S.No.217/9 are not a vacant land as alleged in the plaint as defendant has constructed house and is residing therein.

9. In the patta issued to the defendant it has been clearly mentioned that cart track is through S.No.217/14 and not in the suit property as alleged by the plaintiff. It has been clearly mentioned that 15 feet cart track branches out from common lane and runs on the northern side in S.No.217/14, proceeds east west and enters S.No.217/13, turns north and reaches the defendant's land in S.No.217/9. The lands in S.No.217/14 is a vacant site and no one is residing there.



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10. Therefore, it is false to state that people reside in S.No.217/14 and others are using common lane in S.No.217/3. Further, the lane in S.No.217/3 runs upto S.No.217/2 and does not enter the defendant's land in S.No.217/9. The suit cart track exists only in S.No.217/14 and not in the suit property. Therefore, the defendant sought to have the suit dismissed.

11. The plaintiffs had thereafter come forward to file an application seeking an amendment to delete S.No.14 and add in that place S.No.217/14 and also to amend the description of the property in I.A.No.5 of 2023. In the affidavit filed in support of the said application, the plaintiffs have stated that by an oversight the number “217” was omitted to be added before “14” while describing the survey number, which fact came to their knowledge only when preparing for the trial. Therefore, the plaintiffs have come forward with the above application.



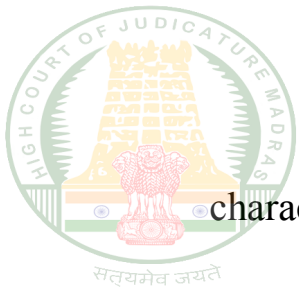
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12. The plaintiffs would submit that the amendment does not create a new case or change a cause of action.

13. The defendant filed a counter denying the allegations contained in the affidavit filed in support of the said petition and stated that the plaintiffs cannot prove their possession by producing sale deeds of third parties and in the description of the property the plaintiffs can only mention the recitals provided in the sale deed in their favour and not the recitals mentioned in the sale deed in favour of third parties.

14. Further, the plaintiffs had earlier filed an amendment petition in IA.No.2 of 2022 and the instant amendment is a second amendment filed by the plaintiffs. The defendant would submit that the plaintiffs are only attempting to protract the proceedings by filing one amendment after the other. That apart, it is the contention of the defendant that the proposed amendment would change the nature and



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character of the suit. Therefore, sought for the dismissal.

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15. The learned Additional District Munsif, Tiruchengode, by order dated 09.08.2024 dismissed the petition on the ground that no explanation is forthcoming from the plaintiff as to why the amendment has not been filed before the Trial of the suit. That apart, there is no pleadings to the fact that despite due exercise of diligence the facts had not been within the knowledge of the plaintiff. Therefore, the application was dismissed.

16. Challenging the same the plaintiffs are before this Court.

17. Heard the learned counsel and perused the records.

18. The only amendment that is sought to be introduced is the addition of the numerical 217/14 in the survey number. This by no stretch of imagination would change either the cause of action or the subject matter. In fact the defendant in his written statement had



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himself referred to this survey number.

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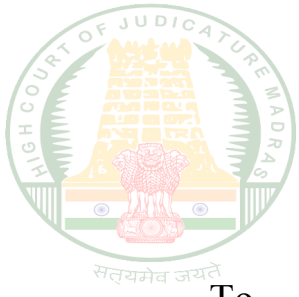
19. Therefore, the order of the learned Additional District Munsif, Tiruchengode, has to necessarily be set aside. Accordingly, the Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Internet : Yes/No

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Additional District Munsif,
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