



CRP(MD). No.441 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.04.2026

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THE HON'BLE MR. JUSTICE **V.LAKSHMINARAYANAN**

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and CMP(MD)No.2111 of 2023

1. Josephin Lija
2. Stephen Jeyasekhar
3. Jersika (Minor)
[Minor 3rd petitioner represented by her
natural guardian mother 1st petitioner]
... Petitioners/Petitioners/Plaintiffs
Vs.

1. Arthur Aseervatham
2. Suresh ... Respondents/Respondents/Defendants

PRAYER:- Civil Revision Petition filed under Article 227 of The Constitution of India to set aside the fair and decreetal order in I.A. No. 3 of 2022 in O.S. No. 149/2018 passed by Principal District Munsif Court, Padmanabhapuram, dated 24.11.2022.

For Petitioners : Mr.A.Balakrishnan
For R1 : Mr.V.M.Balamohan Thambi

ORDER

This revision challenges the order dated 24.11.2022 made in I.A.No.3 of 2022 in O.S.No. 149 of 2018, whereby the application filed under Order VI Rule 17 and Section 151 of the Code of Civil Procedure had been dismissed by the learned Principal District Munsif, Padmanabhapuram.



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2. The plaintiffs are the civil revision petitioners. For the sake of convenience, the parties are referred to as per their ranks in the suit.

3. The plaintiffs approached the court seeking a relief of permanent injunction to restrain the defendants from interfering with their right or by causing any act of waste over "B" schedule mentioned property. According to the plaintiffs, they are the owners of "A" schedule. "B" Schedule property is a pathway, which runs, on the eastern side of their property. They claimed that on 18.10.2018, the defendants attempted to construct a compound wall and thereby, closing "B" schedule. Hence, the suit was filed for the aforesaid relief.

4. Summons were served on the defendants. The defendants filed a written statement. In their written statement, they denied the averments that a pathway running to a width of 12 feet runs over R.S.No.731/2B of Keezhmidalam Village, namely "B" schedule. According to them, this is a second round of litigation. Earlier, the second plaintiff had filed a suit in O.S.No.50 of 2011 seeking declaration of easementary right over the pathway having a width of 5 feet over R.S.Plot Nos.15 to 18 of field No.737 of Midalam Village. That suit was dismissed for default on 26.07.2011. Thereafter, they alleged



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that the plaintiffs had constructed a compound wall around their property and also put up a new superstructure. They claimed that the eastern gate of the plaintiffs was constructed over R.S.No.731/2B, leaving a little portion of the said survey number. The compound wall constructed by the plaintiffs was by annexing the remaining pathway shown in the re-survey plan. They claimed that the suit itself is not maintainable and it is bad for non-joinder of necessary parties.

5. Pending the suit, an Advocate Commissioner was appointed. He visited the suit property on 22.10.2018 and on 24.03.2019. He submitted a report to the court on 26.03.2019. The report is also accompanied with a plan.

6. The plaintiffs claimed that, after perusing the Advocate commissioner's report, they got a clarity on the extent of the "B" schedule property. Consequently, they filed an application in I.A.No.3 of 2022 for amendment of the plaint in respect to the extent of "B" Schedule property alone. This application was opposed by way of a counter. More or less reflecting the same pleas as raised in the written statement.



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7. The learned Principal District Munsif Court, Padmanabhapuram, who took up the application for disposal applied the principles relating to Order XXVI Rule 9 of the Code of Civil Procedure to an application filed under Order VI Rule 17 of the Code of Civil Procedure and dismissed the said petition. Hence, this revision.

8. Heard the counsel. I have gone through the papers. I have applied my mind to the facts of the case.

9. When an application is filed under Order VI Rule 17 of the Code of Civil Procedure, it is not expected of the court below to apply principles relating to Order XXVI Rule 9 C.P.C and to dismiss the same. To my knowledge, the consideration for an application for amendment has absolutely no relevance with respect to consideration for an application filed under XXVI Rule 9 C.P.C. If one position of law is applied to the other application, it would only result in a debacle as happened in the present case.

10. A perusal of the impugned order shows patent non-application of mind to the proceeding that were before him. The



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plaintiffs wanted to amend the plaint on the basis of the Advocate Commissioner's report. To state that, this is an attempt to collect evidence shows that the learned Judge has forgotten the fundamental principles of civil law. I am aware that the words are harsh, but the nature of the order is so.

11. The principles for permitting an amendment are whether there is a change in the cause of action or whether the frame of the suit itself has changed. The present amendment application does neither. It only brings a clarity into the scope of the suit. It is always open to a party to file an application to bring to the notice of the court certain facts, which are disclosed in the report of the Advocate Commissioner. The amendment, not changing the cause of action or the frame of the suit, being a pretrial amendment, ought to have been allowed by the Trial Court.

12. Mr.Balamohan Thambi states that the parties have filed objections to the Advocate Commissioner's report. If objections are on record, it is for the learned Principal District Munsif Court, Padbhanabhapuram, to apply the principles laid down by the **Hon'ble Mr.Justice S.S.Subramani** in **Vemba Gounder** vs. **Pooncholai**



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Gounder in **AIR 1996 MAD 347** and decide on the veracity of the report.

13. Insofar as the amendment application is concerned, as it is a pre-trial amendment, I am of the opinion that it deserves to be allowed. Pre-trial amendments require liberal interpretation (See, **LIC vs. Sanjeev Builders Private Limited, 2022 SCC Online SC 1128**).

14. Accordingly, this Civil Revision Petition succeeds. The order in I.A. No. 3 of 2022 in O.S. No. 149 of 2018 passed by the Principal District Munsif Court, Padmanabhapuram is set aside. I.A.No.3 of 2022 will stand allowed. The plaintiffs are granted 15 days time from the date of uploading of the copy of this order to the website of this Court to amend the plaint. The defendants shall file their amended written statement within two weeks thereafter. Since the suit is of the year 2018 and being one for bare injunction, the learned Principal District Munsif Court, Padmanabhapuram shall expedite the trial at all stages.No costs. Consequently, connected miscellaneous petition is closed.

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TO

1. The Principal District Munsif Court,
Padbhanabhapuram.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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