

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1264 of 2015 &
M.P.No.1 of 2015

Radhambal @ Radha

... Petitioner

v.

1.Baskar
2.G.Prabakar
3.G.Parthasarathy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decreetal order in I.A.No.12911 of 2014 in O.S.No.8539 of 2008, dated 10.12.2014 passed by the XVII Assistant City Civil Court Judge at Chennai.

For Petitioner : Mr.G.Thiyagarajan

For Caveators : Mr.P.Srinivasasalu

O R D E R

Challenging the fair and final order passed in I.A.No.12911 of 2014 in O.S.No.8539 of 2008 on the file of XVII Assistant Judge, City Civil Court, Chennai, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.8539 of 2008 for permanent injunction stating that she is in possession of the property and that the defendants are trying to interfere with her possession. The defendants filed their written statement and are contesting the suit.

3. The suit was filed in the year 2008 and in the year 2014, the plaintiff filed an application in I.A.No.12911 of 2014 under Order VI Rule 17 CPC to amend the plaint by incorporating the relief for declaration and for recovery of possession stating that the defendants had dispossessed her in July 2012. When the application was filed in the year 2014, the matter was posted for arguments.

4. It is the case of the petitioner that even in July 2012, the trial court had taken up the suit for trial and since the cause of action for recovery of possession had arisen only on dispossession in the suit property, the present application filed in the year 2014 cannot be rejected on the ground that the same was filed subsequent to the commencement of the trial.

5. The petitioner has not given any reason for the delay in filing the application immediately after the alleged dispossession. When she has stated that she was dispossessed in July 2012, she should have filed the application immediately. But, for the reasons best known to her, she waited nearly for two years, that too, when the matter is posted for arguments.

6. The learned counsel for the petitioner also fairly enclosed the oral evidence of the parties in the typed set of papers.

7. On a perusal of the evidence of P.W.1, it is clear that she had admitted in her oral evidence that she was dispossessed from the suit property two years after the filing of the suit and that she is not in possession of the property since then.

8. As already stated, the suit was filed in the year 2008 and even according to the plaintiff, she was dispossessed in the year 2010. When she had admitted that she was dispossessed from the suit property in the year 2010 in her evidence, in the affidavit filed in support of the application, she has stated that she was dispossessed in July 2012. The evidence of P.W.1 itself would work against the averments stated in the affidavit filed in support of the petition. From the evidence of P.W.1, it is clear that the plaintiff is not in possession of the property since the year 2010. However,

she has chosen to file the application under Order 6 Rule 17 CPC only in the year 2014 that too, when the suit is posted for arguments.

9. Since the petitioner has not given any acceptable reasons for amending the plaint by incorporating new reliefs, the trial court has rightly dismissed the application.

10. When the averments stated in the application itself is found to be incorrect, I am not inclined to entertain the Civil Revision Petition. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

13.04.2015

Index : No
Internet : Yes

Rj

To

The XVII Assistant Judge,
City Civil Court,
Chennai.

M. DURAISWAMY,J.,

Rj

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