

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.Nos.3195 & 3196 of 2015

&

M.P.No.1 of 2015

C.R.P.No.3195/2015

R.Paramasivam ... Petitioner/Petitioner/Defendant/
Revision Petitioner
Vs.

Selvaraj ... Respondent/Respondent/Plaintiff/
Respondent

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 28.04.2015 made in un-numbered I.A.No. of 2015 in I.A.No.168 of 2015 in O.S.No.186 of 2010 on the file of the District Munsif Court, Attur, Salem.

For Petitioner : Mr.D.Shivakumaran

C.R.P.No.3196/2015

R.Paramasivam ... Petitioner/Defendant/Petitioner
Vs.

Selvaraj ... Respondent/Plaintiff/Respondent

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 06.04.2015 made in I.A.No.168 of 2015 in O.S.No.186 of 2010 on the file of the District Munsif Court, Attur, Salem.

For Petitioner : Mr.D.Shivakumaran

C O M M O N O R D E R

The revision petitioner is the defendant in O.S.No.186 of 2010 on the file of the District Munsif Court, Attur. The respondent herein is the plaintiff in the said suit. The said suit has been filed for permanent injunction restraining the revision petitioner from interfering with the peaceful possession and enjoyment of the suit scheduled property.

2. The revision petitioner has filed the written statement alleging that the respondent/plaintiff is not the only owner of the suit schedule property but one Chinnathambi, Kaliyaperumal and other legal heirs of the deceased Marudhai Padayachi are also having right over the suit property. The revision petitioner further pleaded that without declaring the title, the suit for permanent injunction is not maintainable.

3. While so, the Trial Court framed the following issues:
"1.Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
2.To what other relief?"

4. After framing of the issues, two witnesses were examined on the side of the plaintiff. It is stated that now D.W.1 is in the witness box.

5. At this juncture, the revision petitioner/defendant filed an application in I.A.No.168 of 2015 in O.S.No.186 of 2010 to frame the additional issues, namely,

1. Whether the suit is maintainable without relief of declaration?
2. Whether the suit is bad for non-joinder of necessary parties?
3. Whether the plaintiff is having cause of action for the suit?

6. The Trial Court passed an order dated 06.04.2015 in I.A.No.168 of 2015, taking into account the fact that the suit is in the stage of DW1 cross and the petitioner has opportunity to prove his case as per his written statement. The Trial Court has further held as follows:

"This Court is of the opinion that considering interest of justice, framing of additional issues will be considered after full trial, since the Court is empowered to frame additional issues at any time before pronouncing the judgment under Order 14 Rule 5 CPC."

7. While so, the revision petitioner filed an application to review the aforesaid order in un-numbered I.A.No.____ of 2015 in I.A.No.168 of 2015 in O.S.No.186 of 2010. The said application was rejected by the Trial Court by an order dated 28.04.2015. It is

useful to extract the order passed in the review application.

"The petition to frame additional issues had filed at the time of D.W.1 cross continuation and the issues framed in this case on 9.9.2011 and trial commenced on 3.9.2013. As far as the first issue is concerned it is pure question of law, can be argued by both side and another second issue is concerned, this is suit for permanent injunction, the plaintiff has to decide the parties who are all disturbing his possession and third one issue, can be established on the pleadings of both side. Further no final order has been passed on I.A.168/2015. There is no specific provision under which the petitioner has filed this petition, is not clearly explained. Further the petitioner is no way going to prejudice for non-framing of additional issues in this stage and it seems that he is dragging on the case proceedings. Hence, I find no reasons for review in this matter. Therefore, this petition is rejected."

8. These revision petitions are preferred against the order dated 06.04.2015 made in I.A.No.168 of 2015 in O.S.No.186 of 2010 and the order dated 28.04.2015 made in un-numbered I.A.No. of 2015 in I.A.No.168 of 2015 in O.S.No.186 of 2010, which was filed to review the order referred to above.

9. I have heard the learned counsel appearing for the petitioner.

10. The learned counsel for the petitioner strenuously contended that the Trial Court ought to have framed the additional issues and he referred to Order 14 Rule 5 CPC in this regard.

11. I have perused the provision Order 14 Rule 5 CPC and the connected records.

12. The Trial Court has categorically held that the first additional issue is a legal issue that can be argued by both sides. As far as the second issue is concerned, it is for the plaintiff to decide who are the parties disturbing his possession. As far as the third issue is concerned, the Trial Court has stated that as to the cause of action arose for the suit can be determined based on the pleadings.

13. Furthermore, the Trial Court has not passed a final order in I.A.No.168 of 2015, but it has held that the framing of additional issues will be considered after full trial. Thus, the Trial Court is conscious of its power and duties.

14. In these circumstances, I do not find any infirmity in the orders passed by the trial Court and hence, the Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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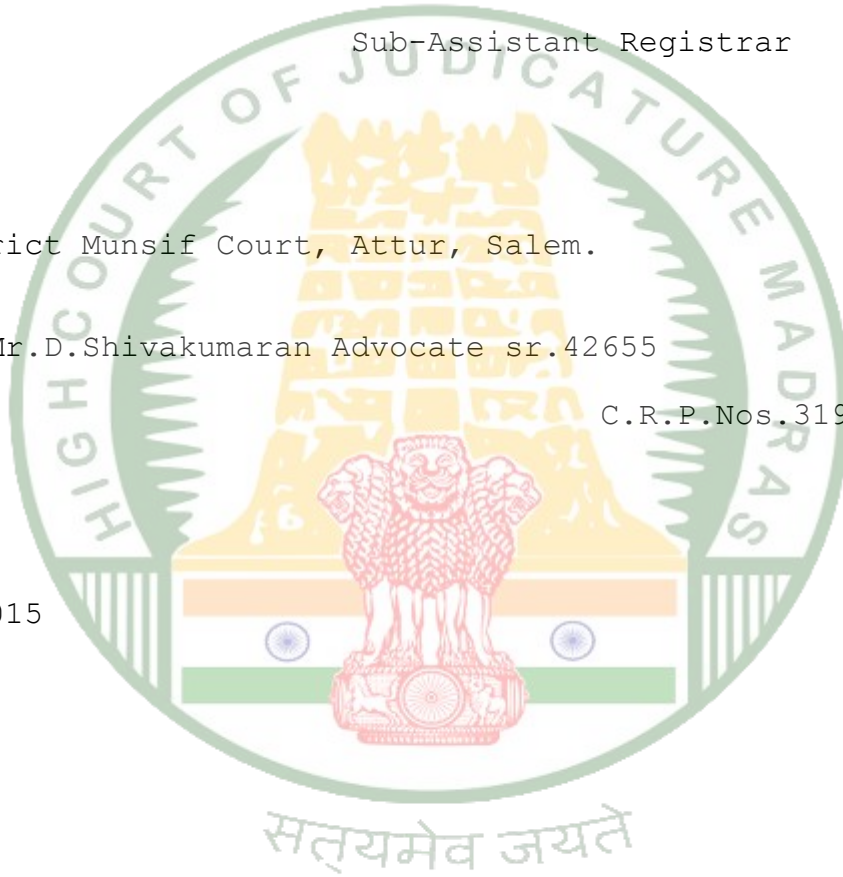
To

The District Munsif Court, Attur, Salem.

+1 cc to Mr.D.Shivakumaran Advocate sr.42655

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