

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) No.727 of 2015

1.Padmavathy
2.Kamalanathan
3.Muthammal
4.Angammal

...

Petitioners

Vs.

1.Pavunammal
2.Somasundaram
3.Subramani

...

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal order dated 04.08.2014 passed in I.A.No.215 of 2014 in O.S.No.292 of 2006, on the file of the District Munsif, Mdurantagam.

For petitioners : Mr.K.Govi Ganesan

ORDER

This civil revision petition arises out of the order dated 04.08.2014 passed by the District Munsif, Madhurandhagam in I.A.No.215 of 2014 in O.S.No.292 of 2006.

2. Brief facts of the case are as follows:

The petitioners had instituted a suit in O.S.No.292 of 2006 against the respondents for declaration of title and for permanent injunction. The defendants filed their written statement dated 19.04.2010 stating that they are in possession of the suit property and the plaintiffs are not entitled for permanent injunction. While so, the plaintiffs filed I.A.No.215 of 2014 under Order 6 Rule 17 and Section 151 C.P.C. seeking amendment of the prayer for recovery of possession alleging that the defendants trespassed into the suit property, after institution of the suit. The application was resisted by the respondents. The trial Court dismissed the application. Aggrieved by the order, the present civil revision petition is filed.

3. Mr.K.Govi Ganesan, Learned counsel for the petitioners submitted that pending the suit, the defendants have trespassed into the suit property, therefore, the plaintiffs are entitled for amendment of the plaint. The learned counsel further submitted that no prejudice would be caused to the respondents if amendment is allowed. I do not agree with the contentions of the learned counsel for the petitioners.

4. The defendants in their written statement dated 19.04.2010 categorically stated that the defendants are in possession and enjoyment of the

suit property. P.W.1 has admitted in the cross-examination that the second defendant had constructed a house and resided therein since 1979. The trial Court, after considering the evidence of P.W.1, rejected the application holding that it will change nature and character of the suit property.

5. The learned counsel for the petitioners submitted that the plaintiffs may be permitted to file an application under Order 23 for withdrawal of the suit and the same can be considered by the trial Court. If any application is filed by the plaintiffs, the trial Court shall consider the same on merits and in accordance with law.

In the result, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.03.2015

Index : Yes/No
Internet: Yes/No
sms
To
The District Munsif, Mdurantagam.

K.KALYANASUNDARAM,J

sms

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