

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2629 of 2012
and M.P.No.1 of 2012

1.Chinappappa alias Muniammal

2.Kanamaiah Naidu

3.Govindasamy

4.Venkataraman

5.Duraisamy

6.Krishnan

... Petitioners

Vs.

1.Rajendran

2.Devendran

3.Nagaraj

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.11.2011 made in I.A.No.57 of 2011 in A.S.No.59 of 2010 on the file of the Principal Subordinate Court, Krishnagiri.

For Petitioners : Mr.V.Nicholas

For Respondents : Mr.V.Lakshminarayanan

ORDER

Challenging the fair and decreetal order passed in I.A.No.57 of 2011 in A.S.No.59 of 2010 on the file of the Principal Subordinate Court, Krishnagiri, the plaintiffs in O.S.No.330 of 2007 have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.330 of 2007 for declaration, permanent injunction or in the alternative for recovery of possession. The defendants filed their written statement and contested the suit.

3.In the written statement, in paragraph no.6, the 1st defendant has stated that the father of the 1st defendant died about 33 years ago. Further, in paragraph no.7, the 1st defendant has stated that the defendants 1 to 3 are in possession of the lands in Survey No.268/1 measuring an extent of 2 acres without any interruption and to the knowledge of the plaintiffs and other villagers. That apart, in paragraph no.11 of the written statement, the 1st defendant has stated that the 1st defendant and his brothers have been in possession and enjoyment of the said lands for more than 20 years and the plaintiffs are not entitled to claim any right or title over the said lands.

4.The trial Court, taking into consideration the available oral and

documentary evidences let in by the parties, decreed the suit for declaration and recovery of possession.

5. Aggrieved over the judgment and decree of the trial Court, the defendants preferred an appeal in A.S.No.59 of 2010. In the said appeal, the defendants took out an application in I.A.No.57 of 2011 under Order 8 Rule 9 of the Civil Procedure Code to receive the additional written statement. In the additional written statement, the defendants have raised the plea of adverse possession and also stated that the suit is barred by limitation. The application filed by the defendants was contested by the plaintiffs before the Lower Appellate Court. The Lower Appellate Court allowed the application and permitted the defendants to file the additional written statement and also framed additional issues viz.,

1. Whether the 1st defendant had perfected his title to the suit properties by adverse possession?
2. Whether the suit relief for recovery of possession of the suit is barred by limitation?

6. The learned counsel for the petitioners submitted that the Lower Appellate Court erroneously allowed the application and the Lower Appellate Court ought not to have allowed the application at the appellate stage. In support of his contention the learned counsel relied upon the

judgment reported in **(2003) 3 M.L.J. 287 [Vimalammal, W/o Karthikeyan Vs. Duraisamy Naidu, S/o Muthiyalu Naidu and others]** wherein this Court held that accepting the written statement at the appellate stage is unknown to law.

7. Countering the submissions made by the learned counsel for the petitioners, Mr. V. Lakshminarayanan, the learned counsel for the respondents submitted that the pleas raised by the defendants in the additional written statement are not new and that the defendants have already raised these pleas in the original written statement filed before the trial Court. The learned counsel for the respondents submitted that in paragraph nos. 6, 7 & 11, the defendants have already raised the plea of limitation and adverse possession. However, the trial Court, while decreeing the suit, observed that the defendants have not raised the plea of adverse possession and limitation in their written statement. Further, the learned counsel for the respondents submitted that no fresh evidence is required to establish the plea of adverse possession and limitation. Since according to the respondents the plea of adverse possession and limitation were already raised in the original written statement, I am of the view that there is no necessity for receiving the additional written statement at the appellate stage. In these circumstances, the judgment relied upon by the learned counsel for the petitioners squarely

applies to the facts and circumstances of the case. In view of the same, the application filed by the defendants under Order 8 Rule 9 of the Civil Procedure Code is liable to be rejected.

8. Accordingly, the fair and decreetal order passed in I.A.No.57 of 2011 in A.S.No.59 of 2010 are set aside. Since, according to the learned counsel for the respondents, the defendants have already deposed evidence with regard to the plea of adverse possession and limitation, the Lower Appellate Court can decide the additional issues framed in the First Appeal based on the available oral and documentary evidence.

9. With this observation, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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To

The Principal Subordinate Court,
Krishnagiri.

M.DURAIWAMY,J.
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