

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.PD.No.1795 of 2013

and

M.P.No.1 of 2013

1. Venkatachalam
2. Shanmugam
3. Chakkaravathi

... Petitioners

- Vs -

K.Jagadeesan

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal Order dated 06.08.2012 and made in I.A.191 of 2012 in O.S.No.246 of 2010 on the file of the learned II Additional District Munsif, Salem.

For Petitioners	:	Mr.R.Marudhachalamurthy
For Respondent	:	No Appearance

O R D E R

The Fair and Decreetal Order dated 06.08.2012 and made in I.A.191 of 2012 in O.S.No.246 of 2010 are under challenge in this revision.

2. The revision petitioners herein are the defendants 1 to 3 in the suit whereas the respondent is the plaintiff.

3. When the matter is taken up for hearing today, the learned counsel for the revision petitioner is present. On the other hand despite service of notice on the respondent, he has not chosen to appear and therefore, he is called absent.

4. This Court has perused the grounds of revision and the impugned order dated 06.08.2012 and heard the learned counsel for the petitioners. Having regard to all the related facts and circumstances, the following order is being passed, on merits.

5. The respondent herein had filed the above suit as against the revision petitioner for bare injunction claiming that they have been in possession and enjoyment of the suit property even at the time of filing of the suit. This was resisted by the petitioners by filing their written statement. Even in the written statement filed by the petitioners they have claimed title over the property saying that they had purchased the property and subsequent to their purchase, they have possession and enjoyment in the property. Based on the pleadings necessary issues were formulated and process of recording of evidence was commenced and subsequently completed and the arguments on

either side were advanced. Only at that time, the respondent has come forward with this application in I.A.No.191 of 2012 seeking the relief of declaration of title by way of amendment of plaint.

6. This petition was contested by the revision petitioners. However, the learned Trial Judge had proceeded to pass the precise order containing only two paragraphs, wherein, he has observed that :

''The evidence put-forth by the plaintiff's side and the defendant's side warrant an amendment in the relief sought for.''

7. It has to be noted that the respondent in his affidavit filed in support of the petition has stated that the revision petitioner/defendant had vehemently denied his title, therefore, he had to amend the plaint by inclusion of the prayer of declaration otherwise, he would be put into irreparable loss. Except this reason, nothing has been stated in the affidavit.

8. As afore stated, the revision petitioners have contended that they had purchased the property and as such they have been possession and enjoyment of the suit

property and further, they have claimed absolute right over the suit property. Even after filing of written statement, the respondent/plaintiff could have taken effective steps to amend the plaint. After advancing arguments on either side, the petition in I.A.No.191 of 2012 came to be filed. As per Rule 17 to Order VI of C.P.C., this petition ought not to have been allowed because no sufficient reason is assigned to enable the respondent/plaintiff to get the plaint amended by inclusion of the prayer of declaration.

9. It is also revealed that the petition itself is an after thought and hence, this Court finds that the impugned order is not at all sustainable either in law or facts.

10. In the result, this revision is allowed and the impugned order is set aside and the petition in I.A.No.191 of 2012 is dismissed and the trial Court is directed to dispose of the suit in O.S.No.246 of 2010 within a period of one month from the date of receipt of a copy of this order. No order as to costs. Consequently, connected miscellaneous petition is closed.

25.11.2016

Index:Yes/No
Internet:Yes/No
ssn

To
The II Additional District Munsif,
Salem.

T.MATHIVANAN, J. ,

ssn

**C.R.P.PD.No.1795 of 2013
and
M.P.No.1 of 2013**

25.11.2016

<http://www.judis.nic.in>