

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2016

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.3392 of 2009

and

M.P.Nos. 1,1, and 1 of 2009, 2010 and 2015

1. Rani
2. Sheela

... Petitioners

Versus

1. Radha
2. Shivaji
3. Egavalli
4. Anand
5. Minor Rajasekaran
6. Minor Jayanthi
(Minors 5 and 6 rep by
mother 3rd respondnet)

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order in I.A.No.1109 of 2008 in O.S.No.133 of 2005 dated 02.07.2009 on the file of the Additional District Munsif, Villupuram, allowing the application for amending the plaint.

For Petitioners : Mr.N.Suresh

For Respondents 2 to 6 : Mr.A.Thamizharasan

For Respondent-1 : No Appearance

ORDER

The defendants are the petitioners in this Civil Revision Petition, challenging the amendment of the plaint at the behest of the plaintiffs.

2. It is contended by the learned counsel for the petitioners that the suit was originally filed for permanent injunction restraining the defendants from obstructing the construction of the compound wall by the plaintiffs in the suit property. In the written statement filed by the first defendant, the possession of the plaintiffs was denied. The defendants further stated that the suit property is a Natham property which belonged to one Chinammal and from the said Chinnammal, the first respondent's mother Anandayee Ammal took possession and put up a hut and is being in possession for more than 45 years. The defendants had specifically denied title of the plaintiffs by contending that the defendants are in possession of the suit property.

3. However, the plaintiffs had filed I.A.No.1109 of 2008 for amending the plaint by seeking a relief of declaration that the suit property belong to the plaintiffs and handover the possession of the same to them, after removing the hut in the suit property. The said application was allowed by the learned Additional District Munsif,

Vellore. Aggrieved by the said order, the present Civil Revision has been filed.

4. The learned counsel for the petitioners contended that the amendment of the application ought not to have been allowed after commencement of the trial, that too, when the relief sought for is barred by limitation. He has also relied on the decision of the Hon'ble Supreme Court reported in (2016) 1 Supreme Court Cases 332 **L.C.HANUMANTHAPPA (SINCE DEAD), REPRESENTED BY HIS LEGAL REPRESENTATIVES Vs. H.B.SHIVAKUMAR**, wherein it was held that amendment seeking further relief of declaration of title to the suit property can be granted subject to plea of limitation that could be raised by defendant in the additional written statement. Right to sue accrues when the title is denied by the defendants.

5. The amendment now sought for is only relief of declaration. As the plaintiffs can always seek a relief of title and recovery of possession and the similar facts that are pleaded in the plaint which is one for prohibitory injunction, this amendment would avoid multiplicity of the suits. In exercise of his discretion, the learned Additional District Munsif allowed the application for amendment on payment of cost.

6. In view of the above, the revision petitioners are entitled to file their written statement raising all the objections including the question of limitations, within a period of four weeks from the date of receipt of a copy of this order. The suit being of the year 2005, the learned Additional District Munsif is directed to dispose of the suit on or before 30th June 2016.

With the above observation, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition are closed.

08.02.2016

Index: Yes/No

Internet: Yes/No

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To

The Additional District Munsif, Villupuram

PUSHPA SATHYANARAYANA.J

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