

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-11-2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.3625 of 2016
and CMP No.18397 of 2016

1.N. Nandagopal
2.Saraswathi

..... Petitioners

vs

1. Arumugam
2. Vasu
3. Kanniyappan
4. Bhaskaran
5. Malarkodi
6. Devendran
7. Maganathan
 Kuppurao (died)
8. Saraswathi Bai
9. Ragavendra Rao
10.Mothilal Rao
11.Sandhya Bai

..... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order passed by the learned Subordinate Judge, Arakkonam in I.A No.46 of 2014 in A.S.No.65 of 2014 on 24.04.2015.

For Petitioners : Mr.J. Shanmugasundara Babu

For respondents : Mr.G. Jeremiah

ORDER

Challenging the fair and final order in I.A.No.46 of 2014 in A.S.No.65 of 2014 on the file of Sub Court, Arakkonam, the plaintiffs in O.S.No.297 of 1996, on the file of District Munsif Court, Arakkonam, have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.297 of 1996 for permanent injunction. After contest, the trial court dismissed the suit. Aggrieved over the same, the plaintiffs filed an appeal in A.S.No.65 of 2014 before the Sub Court, Arakkonam. In the first appeal, the plaintiffs filed an application in I.A.No.46 of 2014 under Order 6 Rule 17 of the Civil Procedure Code to amend the prayer by including the prayer for declaration. The lower Appellate Court dismissed the application. Aggrieved over the same, the plaintiffs have filed the above Civil Revision Petition.

3. The learned counsel, appearing for the petitioners, submitted that the plaintiffs are seeking for declaration on the ground that they have prescribed title by adverse possession.

4. Based on the available materials, the trial Court had dismissed the suit for permanent injunction, finding that the plaintiffs should have sought for declaration of their title. In the affidavit, filed in support of the petition, the plaintiffs have stated that since the plaintiffs have prescribed title by adverse possession, the application, seeking for amendment of the plaint, should be allowed.

5. It is a settled position that the plea of adverse possession is available only to the defendants and the plea of adverse possession can be used as a shield and not as a sword by them.. In other words, the plea of adverse possession can be taken as a defence by the defendants and the same cannot be pleaded by the plaintiffs. The ratio laid down by the Hon'ble Supreme Court in the judgment reported in **2014 (1) SCC 669 (Gurdwara Sahib vs Gram Panchayat Village Sirthala and another)** squarely applies to the

facts and circumstances of the present case. The relevant portion of the ratio laid down by the Apex Court is extracted below:

“4. Insofar as the first issue is concerned, it was decided in favour of the plaintiff returning the findings that the appellant was in adverse possession of the suit property since 13.4.1952 as this fact had been proved by a plethora of documentary evidence produced by the appellant. However, while deciding the second issue, the Court opined that no declaration can be sought on the basis of adverse possession inasmuch as adverse possession can be used as a shield and not as a sword. The learned Civil Judge relied upon the judgment of the Punjab and Haryana High Court, in **Gurdwara Sahib Sannauli vs State of Punjab (2009) 154 PLR 756** and thus, decided the issue against the plaintiff. Issue 3 was also, in the same vein, decided against the appellant.”

6. The ratio laid down by the Apex Court squarely applies to the facts and circumstances of the present case. The lower Appellate

Court rightly dismissed the petition. I do not find any error or irregularity in the order passed by the lower Appellate Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected CMP is closed.

21-11-2016

sr

Index:no

website:yes

To

1. The Subordinate Court, Arakkonam
2. The District Munsif Court, Arakkonam

M. DURAISWAMY,J.,

sr

CRP(NPD)No.3625 of 2016

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