



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.12.2016
CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.R.P(MD)No.1262 of 2016 (PD)
and
C.M.P(MD)No.6047 of 2016

1.Mrs.Valliammal
2.Mrs.Mahalakshmi
3.Mr.M.Muruganandam

.. Petitioners/petitioners/
Plaintiffs

Vs.

1.Mr.K.Natrayan
2.Mr.Manikkam
3.K.Maasaanathammal (Died)
4.Murugayee
5.Maasaanathammal
6.Mariyayee
7.Thulasi
8.Dhandapani
(3rd Respondent died respondents 4 to 8
are the Lrs of the deceased 3rd
respondent)

..Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed, under Art. 227 of the Constitution of India, against the Order, dated 20.04.2016 passed in I.A.No.161 of 2016 in O.S.No.64 of 2005 by District Munsif Court, Palani.

For Petitioners : Mr.S.Anand Chandrasekar
For M/s Sarvabhauman Associates
For R1,R2 &
R4 to R8 : Mr.R.Vijayakumar

ORDER

The petitioners have filed this Civil Revision Petition against the Order, dated 20.04.2016 passed in I.A.No.161 of 2016 in O.S.No.64 of 2005 by the District Munsif, Palani.

2.The petitioners are the plaintiffs in O.S.No.64 of 2005. The respondents are the defendants. Pending suit, the third defendant/third respondent died and respondents 4 to 8 are the legal heirs of third defendant. The petitioners filed O.S.No.64 of 2005 before the District Munsif Court, Palani for

declaration and injunction. The petitioners claimed the said relief on the ground of inheritance and by adverse possession.

3.The respondents filed written statement and stated that trial commenced, after completion of evidence let in by both parties, the suit is posted for arguments on 12.02.2016. At that time, the petitioners filed I.A.No.161 of 2016 to re-open the suit to enable the petitioners to not-press the claim of title based on the adverse possession.

4.The respondents filed counter and opposed the said application and stated that after completion of evidence, the petitioners cannot file application under Order 6 Rule 17 of C.P.C., for amendment of the plaint and therefore, the petitioners have filed the petition to re-open for not pressing the claim based on the adverse possession and the petitioners cannot do indirectly what they cannot do directly, by amendment.

5.The learned Judge considering the averments made in the affidavit and counter affidavit and materials available on record, dismissed the application holding that the petitioners are not entitled to not-press the averments made in the plaint after taking contradictory plea, after completion of evidence by both parties when it is posted for arguments.

6.Against the said order of dismissal, the petitioners have come out with the present Civil Revision Petition.

7.The learned counsel for the petitioners contended that dismissal of application to re-open the suit to enable the petitioners not to press their alternative plea is erroneous. The plea taken by the petitioners by way of inheritance as well as by adverse possession are mutually exclusive and the petitioners have a right not to press, one of the pleas. The learned Judge failed to see that in the evidence, the petitioners have claimed title based on the inheritance only. The learned Judge failed to see, even during the course of arguments the petitioners have a right not to press the specific plea taken in the pleadings.

8.Per contra, the learned counsel for the respondents contended that petitioners as plaintiffs have taken contradictory plea of title by way of inheritance as well as by adverse possession. Having taken such plea, it is not open to the petitioners even to amend the plaint holding the plea of title by way of adverse possession. The petitioners are trying to indirectly achieve their claim, which they cannot do directly by way of amendment and prayed for dismissal of the Civil Revision Petition.

<https://hcservices.ecourts.gov.in/hcservices/> On 11.03.2016, I have heard the learned counsel appearing for the petitioners and the respondents and also perused the entire materials on record.



10. From the materials, it is seen that the petitioners have filed suit for declaration. According to the petitioners, they are the owners and they have title over the suit property by way of inheritance from the husband of the first petitioner and father of petitioners 2 and 3 as well as by continuous possession by them and their predecessor in title. After completion of evidence, the petitioners filed I.A.No.161 of 2016 for re-opening the suit for not pressing the plea of title by adverse possession. The learned Judge has dismissed the application by giving cogent and valid reason. The learned Judge has rightly exercised his jurisdiction in proper perspective and there is no reason or circumstances warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. It is open to the petitioners to raise the plea at the time of arguments before the Court below. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The District Munsif, Palani.

+1cc to M/s.Sarvabhauman Associates, Advocate in SR NO.82632.

+1cc to M/s.R.Vijayakumar, Advocate in SR NO.82561.

Am

ms/rr/me/20.01.2017/3p.4c

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