



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.366 of 2016 (PD)

Amarvathy

.. Petitioner/Petitioner/Plaintiff

Vs.

Thangavel

.. Respondent/Respondent/Defendant

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the impugned fair and decretal order dated 02.07.2015 made in I.A.No.294 of 2013 in O.S.No.175 of 2008 on the file of District Munsif Court, Aundipatty, and set aside the same and allow the Civil Revision Petition.

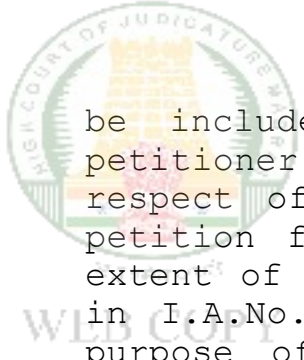
For Petitioner : Mr.V.Janakiramulu

ORDER

This memorandum of Civil Revision Petition has been directed against the fair and decretal order dated 02.07.2015 and made in interlocutory application in I.A.No.294 of 2013 in O.S.No.175 of 2008 on the file of the learned District Munsif, Aundipatty.

2. The petitioner herein is the plaintiff and the respondent is the defendant. The petitioner filed a suit in O.S.No.175 of 2008 praying for mandatory injunction and recovery of possession. The petitioner filed an interlocutory application in I.A.No.262 of 2010 for appointment of an advocate commissioner. That application was ordered and the Advocate Commissioner was appointed and he inspected the property and filed the report in the year 2012. The petitioner filed I.A.No.248 of 2012 for amendment of the extent of the land in the plaint. The same was ordered and the amendment was carried out in the plaint. Subsequently, the petitioner filed another interlocutory application in I.A.No.294 of 2013 for the inclusion of the properties purchased by her mother and other properties. The said application is filed on the ground that the respondent has encroached in respect of these properties also.

3. The respondent filed his counter affidavit and resisted the same. He stated that by this amendment, the nature of the suit will be changed and the petitioner is trying to introduce a new cause of action. He further stated that the properties sought to



be included is not related to the suit properties and the petitioner can file only separate suit, if she is aggrieved in respect of those properties and already the petitioner filed a petition for amendment in I.A.No.248 of 2012 in respect of the extent of land and the same was ordered. The present application in I.A.No.294 of 2013 is filed by the petitioner only for the purpose of dragging on the proceedings. The learned Judge by considering all the facts and circumstances and all the materials and dismissed the application in I.A.No.294 of 2013 on 02.07.2015.

4. The learned counsel for the petitioner submitted that the earlier application in I.A.248 of 2012 was filed for amendment is only with regard to the correction of the extent of land as $13 \frac{3}{4}$ instead of $13 \frac{1}{2}$ in the plaint and now in I.A.No.294 of 2013, the amendment sought for does not introduce a new cause of action and does not change the nature of the Suit. He further submitted that the learned Judge erred in accepting the contention of the respondent and dismissed the application for amendment in I.A.No.294 of 2013.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. Perusal of the records would go to show that the petitioner filed a Suit for mandatory injunction and recovery of possession in respect of the suit properties in O.S.No.175 of 2008 and filed an interlocutory application in I.A.No.294 of 2013 for inclusion of certain properties purchased by her mother and other properties. According to the petitioner after the death of her mother she is in possession and enjoyment of the property. The respondent encroached that properties also. From the materials, it is seen that the properties sought to be included and relief sought for do not relate to the suit schedule properties. The properties mentioned in the petition for amendment are different properties. In the circumstances, the learned Judge dismissed the Application after considering all these facts in proper perspective and came to the conclusion that the petitioner has not given any valid reason for the amendment and this court finds that there is no irregularity of the said order warranting interference of this Court. Hence, this Civil Revision Petition is liable to be dismissed.

7. In the result, this Civil Revision Petition is dismissed. No Costs.

Sd/-

Assistant Registrar(T&P)

/True copy/



To
The District Munsif, Auntipatty, Theni District.

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