



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.476 of 2016 (PD)

R.Subbaiah

... Petitioner/Petitioner/
Appellant/Plaintiff

Vs.

1.Maheswari
2.Rameshkumar
3.Subbaian

... Respondents/Respondents/
Respondents/Defendants

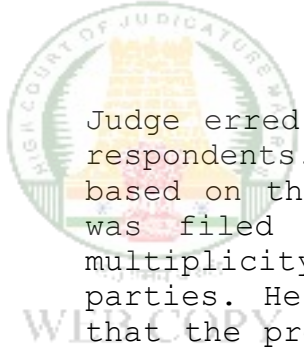
PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.57 of 2014 in A.S.No.105 of 2013 on the file of the Principal Sub Court, Dindigul dated 18.08.2014 and O.S.No.577 of 2009 on the file of the District Munsif Court, Dindigul, dated 31.07.2013.

For Petitioner : Mr.D.Venkatesh

ORDER

The petitioner is the plaintiff. The respondents are the defendants. The petitioner filed suit in O.S.No.577 of 2009, on the file of the Principal District Munsif, Dindigul, for injunction restraining the respondents from interfering with his right of usage of the cart-track. The said suit was dismissed. Against that, the petitioner filed an appeal in A.S.No.105 of 2013 on the file of the Principal Sub Court, Dindigul. In the first appeal, the petitioner filed I.A.No.57 of 2014, for amendment to include the prayer, for declaration. According to the petitioner, the petitioner filed suit for injunction. The respondents filed written statement stating that Survey No.496/1-B belong to the respondents and Survey No.496/5B is absolutely belongs to the petitioner. The respondents are not having any right in Survey No.496/5B. The Cart-track, in survey No.496/1B was used by both petitioner and the respondents. Therefore, he has filed the petition for amendment to include the prayer for declaration to declare the cart-track is common cart-track for both petitioner and respondents. The respondents filed counter affidavit and resisted the same stating that in the first appeal, arguments of the petitioner was heard and it is posted for arguments of the petitioner. Only at that stage, the petitioner filed this petition to include the prayer and prayed for dismissal of I.A., for amendment. The learned Judge considering the judgments relied on by the respondents and considering the facts and arguments of the counsel for the parties, dismissed the application filed by the petitioner.

2.The learned counsel for the petitioner submitted that the learned



Judge erred in dismissing the application only on the contentions of the respondents. The learned Judge failed to consider the fact that only based on the written statement filed by the respondents, the application was filed to include the prayer for declaration in order to avoid multiplicity of proceedings and to find out the dispute between the parties. He further submitted that the learned Judge ought to have seen that the proposed amendment sought for, is not to fill up any lacuna and in spite of due diligence, the relief of declaration was not sought for by the petitioner. He also submitted that the learned Judge committed error in dismissing the application for amendment on the ground of limitation without adverting to the fact that the proposed amendment is not hit by limitation and therefore, he prayed for allowing the Civil Revision Petition.

3. I have heard Mr.D.Venkatesh, learned counsel appearing for the petitioner and also carefully perused the entire materials on record.

4. From the facts and materials on record, it is seen that, originally the petitioner has filed a suit in O.S.No.577 of 2009, for injunction restraining the respondents from using the cart-track. The said suit was dismissed on merits. Against that, the petitioner has filed first appeal. In the first appeal, he has filed the application to amend the prayer in the suit to declare the cart-track is common cart-track. The said application is belated one and it changes the nature of suit to introduce a new cause of action and is not maintainable. It is filed only to fill up the lacuna. The learned Judge considering all the materials, dismissed the application by giving cogent and valid reasons. The said order does not warrant interference by this Court.

5. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Munsif, Dindigul.
2. The Principal Subordinate Judge, Dindigul.

+ 1 CC TO MR.D.VENKATESH, ADVOCATE IN SR NO. 11757

AM

TE/JGB-DP/ : 21/03/2016 : 2P/4C

C.R.P (MD) No.476 of 2016(PD)
29.02.2016