

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2017

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.1947 of 2017

and

C.M.P.No.9453 of 2017

1.Ramasamy Gounder
2.Sankar

... Petitioners

Vs.

P.Jeganathan

... Respondent

Prayer:- Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.03.2017 passed in I.A.No.368 of 2016 in O.S.No.132 of 2014 on the file of the District Munsif cum Judicial Magistrate Court, Kodumudi, Erode District.

For Petitioners : Mr.I.C.Vasudevan

ORDER

Civil Revision Petition has been filed against the fair and decreetal order dated 06.03.2017 passed in I.A.No.368 of 2016 in O.S.No.132 of 2014 on the file of the District Munsif cum Judicial Magistrate Court, Kodumudi, Erode District.

2. Petitioners are the defendants and respondent is the plaintiff in O.S.No.132 of 2014. The respondent filed suit for mandatory injunction, directing the petitioners to remove 22 coconut trees situated adjoining the southern boundary line of the suit property, permanent injunction and for damages to the respondent. The petitioners filed written statement on 26.11.2014 and are contesting the suit. In the said suit, the respondent filed I.A.No.331 of 2014 for appointment of Advocate Commissioner to measure the suit property with the help of qualified surveyor. Advocate Commissioner was appointed. He inspected and measured the property and filed his report. According to the Advocate Commissioner, petitioners encroached the respondent's property to an extent of 465 sq.feet. In the circumstances, the respondent filed I.A.No.368 of 2016 for amendment of the plaint to include the relief of declaration and possession.

3. According to the respondent, he came to know about the encroachment only after filing of the report of the Advocate Commissioner. In view of the same, the respondent filed I.A.No.368 of 2016 for amendment of the plaint to include the relief of declaration and possession.

4. The petitioners filed counter affidavit and submitted that the relief now sought for based on the Commissioner's report is not maintainable. The relief of declaration and possession are barred by

limitation. By amendment, the respondent is introducing new cause of action and it changes the nature of the suit.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, allowed the application holding that by amendment, the respondent is not introducing a new case and by amendment, multiplicity of proceedings can be avoided and question of limitation and adverse possession can be decided only after conclusion of the trial.

6. Against the order dated 06.03.2017 made in I.A.No.368 of 2016, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel for the petitioners and perused the materials available on record.

8. The learned counsel appearing for the petitioners submitted that the respondent purchased the property in the year 1999 and the present application seeking for possession is filed after 12 years. The relief of declaration after 3 years is barred by limitation. The learned Judge failed to see that the respondent filed suit for injunction, subsequently, on coming to know all the encroachment made by the petitioners, the respondent filed suit for declaration and injunction.

9. It is well settled that in a suit for injunction, when the title of the

plaintiff is disputed, it is open to the plaintiff to file a petition for amendment to include the relief of declaration. This Court in number of cases, has held that the relief of declaration by way of amendment can be granted even at the stage of second appeal. Learned Judge also held that after amendment, the petitioners are entitled to file written statement raising all the objections including limitation and adverse possession and necessary issues will be framed at the time of conclusion of the trial. Amendment sought for is necessary in order to avoid multiplicity of proceedings and also to avoid the plea that may be taken by the petitioners that the respondent did not take steps to amend the plaint.

10. In view of the well settled judicial pronouncement, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 06.03.2017.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

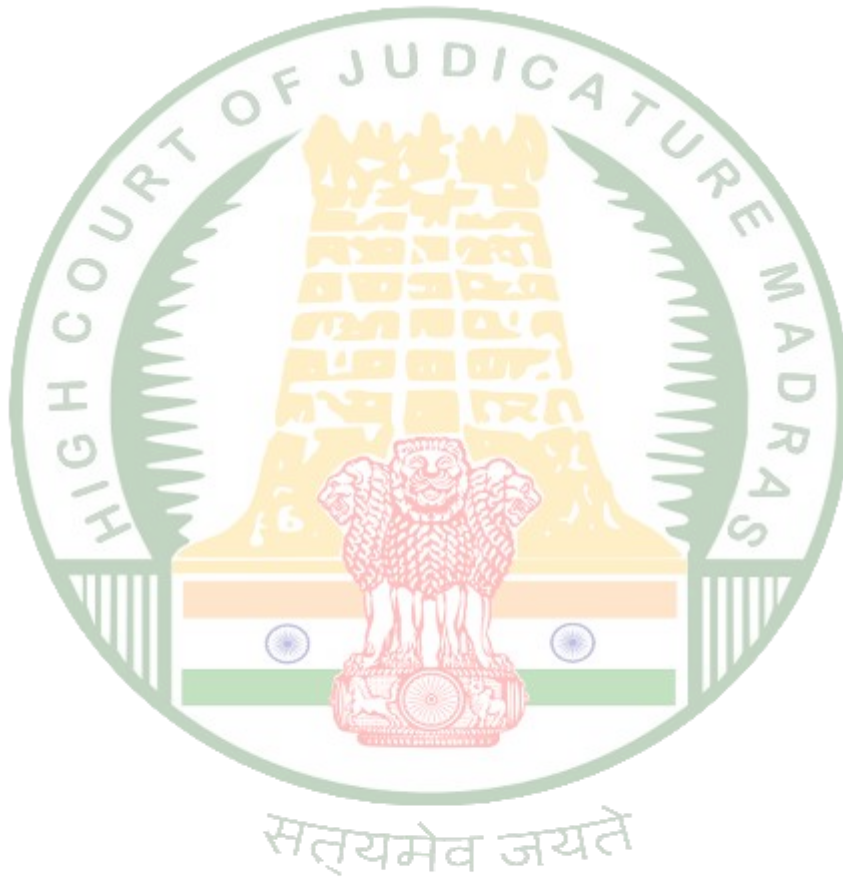
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Index: Yes/No

gsa/kj

To

The District Munsif cum Judicial Magistrate Court,
Kodumudi, Erode District.



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V.M.VELUMANI,J.

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