

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.PD.No.2381 of 2017

and

C.M.P.No.11722 of 2017

1. Lakshmi
2. Mohan
3. Sivakumar
4. Mala
5. Karnanidhi
6. Kala
7. Karthi
8. Saravanan
9. Pandian
10. Sampath
11. Parimala
12. Thiyagarajan

..Petitioners / Respondents

Vs.

1. Jeyalakshmi
2. Anbalagan

..Respondents/Petitioners

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 07.04.2017 passed in I.A.No.1011 of 2016 in O.S.No.69 of 2012 on the file of the District Munsif Court, Nagapattinam.

For Petitioners : Mr. R.Selvakumar

For Respondents : Mr.K.Sukumaran

ORDER

The present Civil Revision Petition arises against the fair and final order dated 07.04.2017 passed in I.A.No.1011 of 2016 in O.S.No.69 of 2012 by the District Munsif Court, Nagapattinam.

2. The brief facts of the case are as follows:

Petitioners herein are the plaintiffs in O.S No. 69 of 2012, which has been filed for recovery of possession and permanent injunction. The 1st respondent filed a written statement on 20.12.2012 contending that they have been in possession of the suit property. Thereafter, the suit was posted for trial. At this stage, the respondents/defendants filed an application in I.A No.1011 of 2016, claiming title by ways for adverse possession of the suit property. The said application was allowed by the trial Court. Challenging the aforesaid order, the petitioners are before this court.

3. Learned counsel for the petitioners would submit that the aforesaid application has been filed by the petitioners belatedly and the same is inconsistent and the said plea has already been taken in the additional written statement. In support of his contention, the learned

counsel for the petitioners also cited the decision of the Hon'ble Supreme Court in the case of *State of Bihar & Ors. vs. Modern Tent House & anr.*, reported in (2017) 8 SCC 567, wherein it is held that as per Order 6 Rule 17 of CPC, amendment of written statement after completion of evidence is permissible and hence, prays to allow the present petition.

4. Per contra, the learned counsel appearing for the respondents would submit that the respondents/ defendants have specifically raised averments in the written statement that they are in continuous possession of the suit property. However, the issue with regard to the adverse possession can be raised by filing an additional written statement. Therefore, the trial court has rightly allowed the said application. *In Devendran & others vs P.V.Palani* reported in **2016 (4) CTC 750**, this Court at paragraph 16 has held as follows:

“16. In the case on hand, it is an admitted fact that the plaintiff and the Defendants have taken similar pleas. The Respondent/ Plaintiff has taken a plea that though the vendor of his father had not included the suit properties in the sale deed executed in favour of this father, his father got possession of the suit properties and was in possession of the same and he himself continued to be in possession and thereby perfected title by adverse possession. The Respondent/plaintiff raised a plea of derivative title and also a plea of perfection of title by adverse possession. Similar is the case of the Revision Petitioners/Defendants. They claim oral sale of the First Item of the Suit properties in the year 1959 by Kuppammal to Amaravathy Mudaliar., the father of the First Petitioner/First Defendant. Necessary pleading regarding their possession right

from 1959 has made out. However, the plea of perfection of title by adverse possession was omitted to be included in the written statement. The omission is technical and it is the result of the inadvertence of the Counsel for the Revision Petitioners/Defendants in preparing the Written statement. In the proposed Additional written statement, no attempt has been made to plead new facts and only the specific plea of having perfected title by adverse possession in respect of the first item of the Suit property, based on the facts pleaded in the original written statement, it sought to be made. For the mistake committed by the Advocate party, who does not know the niceties of the pleadings should not be allowed to suffer”.

5. I have considered the rival submissions and perused the materials available on record.

6. The dispute that has to be looked into in the present revision petition is as to whether filing of additional written statement by the respondents/ defendants, in the said suit is permissible under law. If the contention of the respondents that they were in continuous possession of the suit property is true now by filing the additional written statement the same cannot be changed.

7. This Court is of the view that the question of claiming title by adverse possession can be decided by raising additional issue at the time of trial. Further, by allowing the application filed by the respondents/defendant no prejudice would be caused to the petitioners/ plaintiff since no new defence is taken by the respondents/ defendants. The court below after considering the contentions raised on either side, has held that one more opportunity can be granted to the

petitioners.

8. Taking into account the law laid down by the decision rendered by this Court in 2016(4) CTC 750 cited above, I am of the view that this Civil Revision Petition is liable to be dismissed. However, the issue with regard to adverse possession can be decided by the learned District Munsif, Nagapattinam by framing additional issues.

9. In view the same, the learned District Munsif, Nagapattinam is directed to frame additional issue with regard to adverse possession and decide the same on merits and in accordance with law.

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

सत्यमेव जयते

30.10.2017

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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D.KRISHNAKUMAR. J,

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To

The District Munsif Court,
Nagapattinam.



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