

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE **PUSHPA SATHYANARAYANA**

C.R.P.P.D.No.4390 of 2014
and M.P.No.1 of 2014

V.K.Subramaniam

.. Petitioner

-Vs.-

1. Damodaran
2. Govindathevar
3. Devendiran
4. Thamizhmani
5. Mariappan
6. The Executive Officer
A/m, Suvedaraniyeswarar Swamy Temple,
Vedaraniyam Taluk,
Nagapattinam District

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the learned District Munsif, Vedaraniyam, Nagapattinam District in I.A.No.320 of 2013 in O.S.105 of 2013 dated 07.07.2014.

For petitioner

... Ms.T.Ananthi

For respondents 1,2,4 & 5

... No Appearance

For Respondents 3 and 6

... Served - No Appearance

O R D E R

The plaintiff is the revision petitioner herein and the suit is filed for permanent injunction not to disturb him, who is a lessee of the suit property.

2. The suit is filed on 16.09.2013. After the Court notice was issued on 19.09.2013, the respondents 1 to 5 have encroached upon the suit property and cut down the palm trees, neem trees and casaurina trees. A Commissioner was also appointed, who has filed his report on 30.10.2013. From the report of the Commissioner, it is evident that the defendants have encroached upon the suit property. Therefore, the plaintiff filed I.A.No.320 of 2013 for amending the plaint including the prayer for damages for the subsequent action of the defendants. The said application was dismissed by the trial Court, against which, the above revision has been filed.

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

4. It is the admitted case of the plaintiff that the suit property belonged to the sixth respondent, Vedaraniyeswarar Swamy Temple at

Vedaraniyam and the petitioner is only a lessee of the property. As the tress that were grown by the plaintiff were damaged, the amendment is now sought for including the prayer for damages from the defendants 1 to 5. The said amendment was dismissed by the trial Court stating that when the owner of the property is only the temple, the plaintiff cannot seek for such remedy.

5. The learned counsel appearing for the petitioner submit that when the notice was served on the sixth respondent-temple, an endorsement was made by the learned counsel for the sixth respondent that he has no objection for allowing the application under Order 6 Rule 17. To ascertain the same, notice was issued again to the learned counsel for HR & CE on 22.12.2016. Even after receipt of the notice, there is no appearance for the sixth respondent. As it is only a subsequent event, which lead to the amendment and when the temple has got no objection for the same, the trial Court ought to have allowed the amendment. It is not the case of the sixth defendant that the trees that were damaged were grown by them. It is only the lessee, who is entitled for the damages, when the original owner has got no objection for the same. Hence the order passed by the learned Judge is erroneous and without application of mind and the same has to be set aside.

6. Accordingly, the impugned order of the trial Court is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.02.2017

srn

To

The District Munsif,
Nagapattinam District

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