

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.348 of 2015
and M.P.No.1 of 2015

Jaganathan

... Petitioner

Vs.

1.Kaliyamurthy
2.Ravi
3.Kaviarasan

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.01.2014 made in I.A.No.1023 of 2013 in O.S.No.113 of 2005 on the file of the District Munsif Court, Jayamkondam.

For Petitioner : Mr.D.Govinda Reddy
For Respondents : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 09.01.2014 made in I.A.No.1023 of 2013 in O.S.No.113 of 2005 on the file of the District Munsif Court, Jayamkondam.

2. The petitioner is plaintiff and the respondents are the

defendants in O.S.No.113 of 2005 on the file of the District Munsif Court, Jayamkondam. The petitioner filed said suit for declaration and injunction. The first respondent filed written statement on 31.01.2008, which was adopted by the respondents 2 & 3 and are contesting the suit. The petitioner filed the present application in I.A.No.1023 of 2013 under Order VI Rule 17 of C.P.C., for amendment of the plaint to include the relief of possession.

3. According to the petitioner, in the application filed by him earlier for appointment of an Advocate Commissioner, an Advocate Commissioner was appointed in the year 2006. When the Advocate Commissioner visited the suit property, the respondents prevented the Advocate Commissioner to inspect the suit property and they threatened him. The respondents in the month of December 2011, trespassed into the suit property. In the circumstances, the petitioner has prayed for amendment of the plaint to include the relief of possession.

4. The respondents filed counter affidavit and opposed the said application. They submitted that they are in possession of the suit property as owners from the date of purchase i.e., on

14.05.1984 and the petitioner was not in possession of the suit property at the time of filing of the suit. They denied that they have trespassed into the suit property in the month of December 2011. The respondents also denied the title of the petitioner and submitted that the petitioner forged the document and claiming title to the suit property.

5. The learned Judge dismissed the application on the ground that the petitioner earlier filed I.A.No.1974 of 2010 for amendment of the plaint for the relief of possession, in case the Court comes to the conclusion that the respondents are in possession, amendment may be ordered. The learned Judge further held that if the present application is allowed, it would change the nature of the suit.

6. Against the said order of dismissal dated 09.01.2014 made in I.A.No.1023 of 2013, the present Civil Revision Petition is filed by the petitioner/plaintiff.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though notices were served on the respondents and their names have been printed in the cause

list, there is no representation on behalf of the respondents either in person or through counsel.

8. From the impugned order of the learned Judge, it is seen that earlier petitioner filed I.A.No.1974 of 2010 for amendment of the plaint for relief of possession stating that in case, the Court comes to the conclusion that the respondents are in possession of the suit property, amendment may be ordered. The said application was dismissed on 20.01.2011 on the file of the District Munsif Court, Jayamkondam. Against the said order, the petitioner filed C.R.P.(PD)No.2305 of 2011. This Court permitted the petitioner to withdraw the said Civil Revision Petition and liberty was given to the petitioner to file a fresh application for amendment. The petitioner has filed the present application for amendment. The learned Judge dismissed the present application on the ground that the petitioner had a doubt that the respondents would have encroached the suit property, when they refused to allow the Advocate commissioner to inspect the suit property in the year 2006 itself. The respondents are claiming to be in possession from the year 1984 onwards and the relief of possession claimed by the petitioner is barred by limitation. The petitioner has stated that he was in the suit property,

when he filed suit and the respondents trespassed into the suit property in the month of December 2011 after filing of the suit.

9. Whether the petitioner was in possession of the suit property, when he filed suit or whether the respondents trespassed into the suit property in the month of December 2011 or the respondents are in possession of the suit property from the year 1984, can be decided only by appreciating evidence let in by the parties. Based on such findings only, whether the claim of the petitioner is barred by limitation or not can be decided. The learned Judge failed to consider this aspect and committed irregularity in dismissing the application. In the circumstances, the order of the learned Judge is liable to be set aside and it is hereby set aside.

10. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

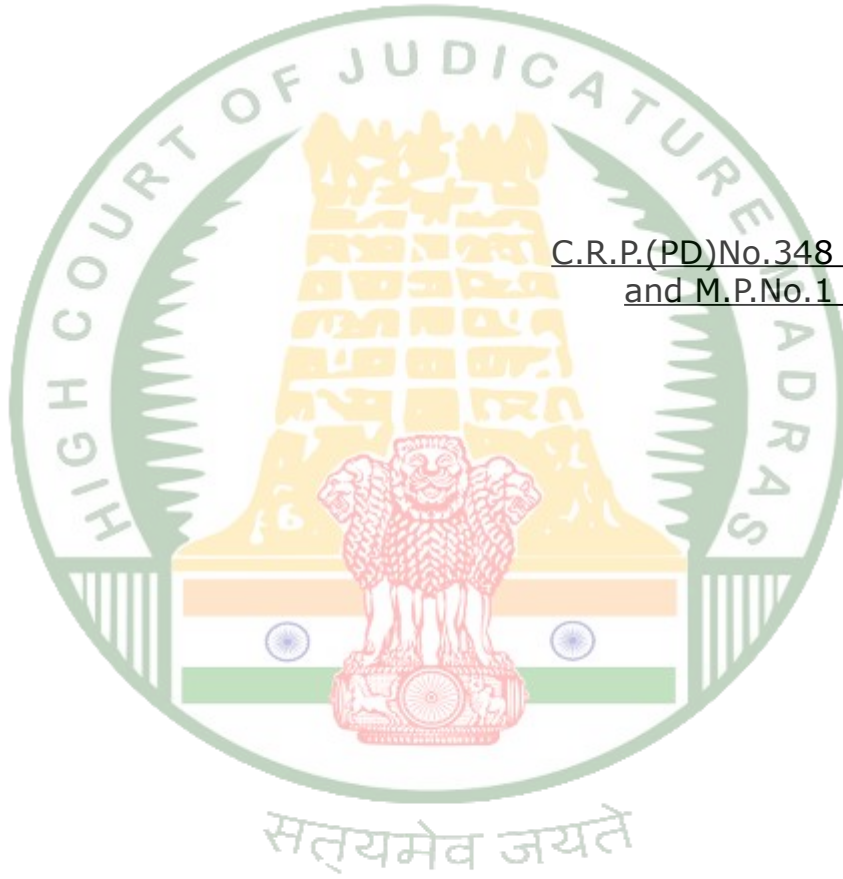
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V.M.VELUMANI, J.

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To

The District Munsif, Jayamkondam.



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