

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2093 of 2013

1.Premavathy
2.Prakash
3.Ramya
versus

: Petitioners

Ravichandran

: Respondent

PRAYER: Revision filed against the order dated 5.4.2013, in I.A.No.1280 of 2010 in O.S.No.119 of 2008 on the file of the District Munsif Court, Dharapuram.

For petitioners :: Mr.A.K.Sridharan

For respondent :: Mr.R.Asokan

ORDER

The respondent filed a suit in O.S.No.119 of 2008 before the learned District Munsif, Dharapuram, praying for a decree of declaration and consequential injunction. The suit was contested by the petitioners by filing written statement wherein a contention was taken that they are in adverse possession of the property.

2. The petitioners after filing written statement, filed an application in I.A.No.1280 of 2010 seeking permission to receive a counter claim. The application was dismissed by the Trial Court primarily on the ground that having taken a defence regarding adverse possession, it is not open to the defendants to make a claim for a decree on the strength of adverse possession. The said order is under challenge in this civil revision petition.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

4. The petitioners contested the suit filed by the respondent on the ground that they are in adverse possession of the property. The Trial Court has to take a decision as to whether the respondent is entitled for a declaration in view of the contention taken by the petitioners that they are in adverse possession of the property. The defence taken by the petitioners in the civil suit cannot be a ground to give them permission to take a counter claim. Since the right is claimed on the basis of adverse possession, it is for the petitioners to plead and prove that they are entitled to possess the property in question adverse to the interest of the respondent. There is no question of granting a decree on the basis of the counter claim and that too in a matter wherein the substantial contention is on the basis of adverse possession. This aspect was considered by the learned Trial Judge and the

application was rightly dismissed. I do not find any error or illegality in the said order warranting interference by invoking the jurisdiction under Article 227 of the Constitution of India.

5. In the upshot, I dismiss the civil revision petition. No costs. Consequently, M.P.No.1 of 2013 is also dismissed.

04.04.2017

Index:Yes/no
tar

To
The District Munsif, Dharampuram.

K.K.SASIDHARAN, J.

(tar)

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