

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.2491 of 2012
and
M.P.No.1 of 2012

1.Ponmuthu
2.Veerakkumar
3.Baritha

... Petitioners

Vs

1.Karuppal
2.Arukkani

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Order and Final Order dated 22.03.2012 made in I.A.No.42 of 2012 in O.S.No.146 of 2010 on the file of I Additional District Munsif, Erode.

For Petitioners : Mr.L.K.Manjunath

For Respondents : Mr.M.Guruprasad (for R1)

No Appearance (for R2)

ORDER

The petitioners by way of this civil revision petition seeks to set aside the order and decree dated 22.03.2012 made in I.A. No.42 of

2012 in O.S.No.146 of 2010, dated 22.03.2012, on the file of the learned I Additional District Munsif, Erode.

2.The first respondent has filed the above suit for permanent injunction. In respect of Suit schedule property as against the respondents.

3.It is the contention of the first respondent /plaintiff that she is in physical possession and enjoyment over the suit schedule property. The petitioners herein / defendants, who have no right has attempted to interfere with her possession over the suit property. Hence, the above suit.

4.The Trial commenced and Cross examination of defendant side was ongoing then. In the said circumstances, the first respondent / plaintiff by alleging her as dispossessed from the suit property by the respondents has filed an interlocutory application in I.A.No.42 of 2012 seeking amendment of prayer by amending the relief as to recovery of possession instead of permanent injunction. Said application came to be allowed by the trial Court permitting the petitioner to amend the suit relief. The said Order is impugned in this civil revision petition.

5.I heard Mr.L.K.Manjunath, learned counsel for the petitioners and Mr.M.Guruprasad, learned counsel for the 1st respondent and perused the entire materials available on record. No representation on behalf of the 2nd respondent.

6.The prime contention of the revision petitioners is that being post trial amendment, the amendment sought is liable to be disallowed.

7.Yet another contention is that while the defendants / petitioners have disputed the alleged possession of the plaintiffs /1st respondent over suit property and pleaded that the petitioners are in possession over the suit property. The 1st respondent has filed the above application to amend her prayer for recovery of possession and the same is liable to be rejected.

8.On perusal of the impugned order it is seen that the suit is found to be filed in March 2010 and the amendment is sought by the 1st respondent claiming that on 29.12.2011 the petitioners trespassed into suit property and she was dispossessed. Accordingly she seeks for

amendment of relief as to recovery of possession.

9. In the said factual backdrop, holding that since the suit is of the year 2010 and basing upon the pleading of the first respondent that she was dispossessed, subsequently in the year 2012 the amendment sought is allowed by considering the alleged subsequent developments.

10. More so, it is seen the Trial Court has clearly held that though amendment is allowed considering the allegation, but to obtain a decree of mandatory injunction the first respondent / plaintiff has to prove that she was in actual position till the date of dispossession, besides establishing her title.

11. Considering the above facts I am of the view that the learned trial judge has rightly allowed the amendment holding that dispossession of the first respondent as well as plaintiff and the first respondent's previous possession must be established by the plaintiff first respondent.

12. In simple words mere allowing of an amendment cannot be

construed as appreciation of plaintiff's case on merits. Therefore I am unable to find any infirmity with the Order impugned.

13.In the result:

(a) This civil revision petition is dismissed, by confirming the order passed in I.A.No.42 of 2012 in O.S.No.146 of 2010, dated 22.03.2012, on the file of the learned I Additional District Munsif, Erode;

(b) The trial Court namely the learned I Additional District Munsif, Erode, is directed to take up the suit on day to day basis, without giving any adjournment to either parties and to dispose of the suit within a period of four months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

24.04.2017

Note:Issue order copy on 25.01.2019

vs

Index : Yes

Internet : Yes

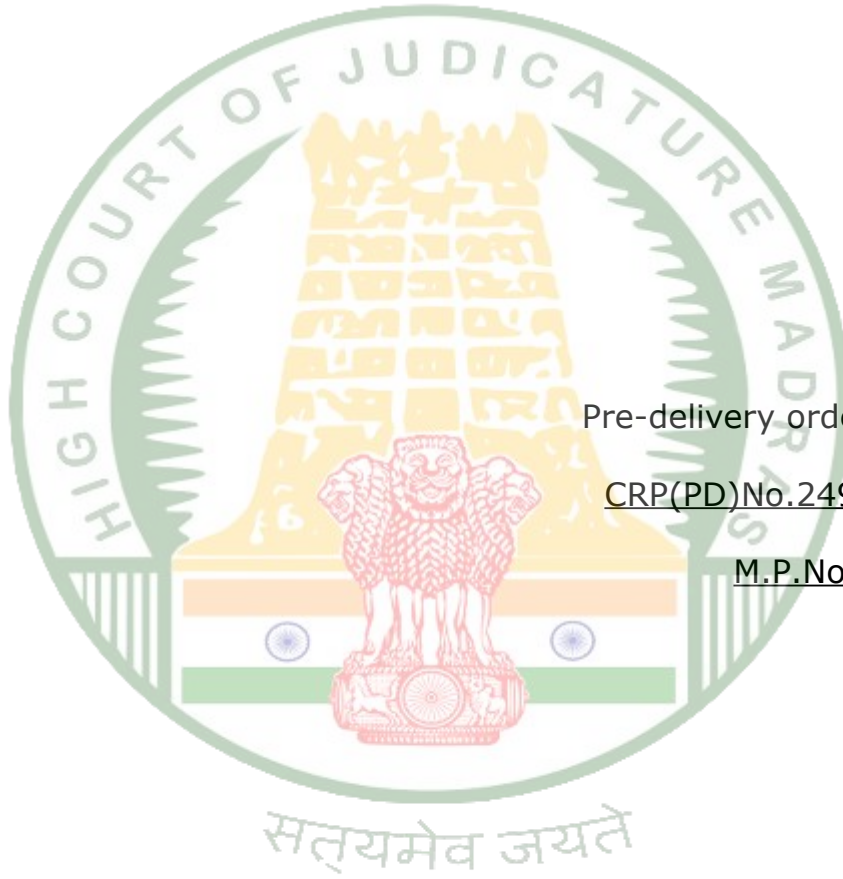
To

The I Additional District Munsif, Erode.

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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in

CRP(PD)No.2491 of 2012
and
M.P.No.1 of 2012

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