

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2518 of 2012
& M.P.No.1 of 2012

1.Thangamani
2.Deivathal
3.Raju @ Nachimuthu
4.Ramasamy
5.Annadurai @ Ramamoorthy
6.Manimaran

.. Petitioners

Vs.

1.Subramaniam
2.Karunaiammal
3.Sukumar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 12.09.2011 made in I.A.No.1075 of 2011 in O.S.No.315 of 2005 on the file of the learned District Munsif, Avinashi.

For Petitioner : M/s.R.Gouri
For Respondent : K.Govi Ganesan

ORDER

This Civil Revision Petition has been filed against the order dated 12.09.2011 made in I.A.No.1075 of 2011 in O.S.No.315 of 2005 on the file of the learned District Munsif, Avinashi.

2. The petitioners are the defendants, the first respondent is the plaintiff in O.S.No.315 of 2005. The second and third respondents are the seventh and eight respondents in I.A.No.1075 of 2011. The first respondent filed the suit for permanent injunction restraining the petitioners and respondents 2 and 3 from interfering with his peaceful possession and enjoyment of the suit property. The first petitioner filed written statement on 14.12.2005 denying the right of the petitioners in respect of the cart track described as Item-II in the schedule to the plaint.

3. The first respondent filed I.A.No.1075 of 2011 for amendment to include the relief of declaration. The first respondent is entitled for the suit cart track described in schedule II. The first respondent claimed such relief in view of the fact that the petitioners have disputed the right of the first respondent in the suit cart track. The first respondent came to know about the denial of the first respondent in the suit cart track only when he was preparing for trial. On the advise of his Advocate, he has filed the application to amend the plaint to include the prayer of declaration that the first respondent is entitled to use the cart track.

4. The first petitioner filed counter affidavit and opposed the said application on the ground that the first petitioner filed written statement on 14.12.2005 itself. The first respondent has come out with the present application in the year 2011 only to drag on the proceedings. The first respondent is not entitled to relief of declaration in view of the fact that originally he filed suit for permanent injunction.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and considering the Order 2 Rule 2 C.P.C. allowed the application.

6. Against the said order dated 12.09.2011 in I.A.No.1075 of 2011, the present civil revision petition is filed by the petitioners.

7. Heard both sides and perused the materials available on record.

8. From the materials available on record, it is seen that the first respondent filed suit originally for permanent injunction against the petitioners and respondents 2 and 3 from interfering with his peaceful possession and enjoyment of the suit property. The first

petitioner has denied the right of the first respondent over the suit cart track. In view of such denial, first respondent has sought for amendment of the plaint to include the relief of declaration. In number of earlier judgements, this Court as well as Apex Court have held that the plaintiffs can seek amendment of the plaint to include the relief of declaration, in the suit for injunction, when the defendants denies the right of the plaintiffs. It has been held that such amendment can be granted even at the stage of second appeal.

9. In view of the well settled judgements, I hold that there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 12.09.2011.

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

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Index : Yes

dm/gsa

V.M.VELUMANI, J.

dm/gsa

To

The District Munsif,
Avinashi.



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