

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2550 of 2012
and
M.P.No.1 of 2012**

Kannan

.. Petitioner

Vs.

1.Sivakozhundhu

2.Ariraman

3.Anbalagan

4.Thiruvengadam

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 06.07.2011 passed in I.A.No.243 of 2010 in O.S.No.165 of 2005 on the file of the learned District Munsif, Panruti.

For Petitioner : Mr.R.Sunil Kumar

For Respondents : M/s.R.Meenal

ORDER

This civil revision is directed against an order dated 06.07.2011 made by the learned District Munsif, Panruti in I.A.No.243 of 2010 in O.S.No.165 of 2005.

2.The revision petitioner herein is the plaintiff in the above suit which was filed for the relief of Permanent Injunction to restrain the defendants/respondents from interfering with his possession over suit property.

3.According to the Revision petitioner/plaintiff the suit property is his exclusive property and the respondent does not have any semblance of right or title. However as revision petitioner faced threat of dispossession, he filed the above suit for bare injunction.

4.In the suit proceeding as the respondents denied revision petitioner's title he was constrained to file an Interlocutory Application in I.A.No.243 of 2010 under Order VI, Rule 17 of CPC seeking to amend the plaint by including the relief of declaration to declare the plaintiff's title over the suit property.

5. According to the revision petitioner the said application on misappraisal of fact and law was dismissed vide the impugned order dated 06.07.2011. The said order is under challenge before this Court by way of this Civil Revision petition.

6. I heard Mr. R. Sunil Kumar, learned counsel for the petitioner and M/s. R. Meenal, learned counsel for the respondents and perused the entire materials available on record.

7. The learned counsel for the revision petitioner would submit that the amendment sought by the revision petitioner is bonafide and intended to avoid multiplicity of proceedings. The amendment sought is imperative for the determination of real question in controversy between the revision petitioner and the respondent.

8. It is his further contention that the allowing of amendment would be beneficial to the revision petitioner and the respondent as well.

9. According to the learned counsel for revision petitioner the application for amendment ought to have been considered by trial

Court in pragmatic and liberal manner enabling the parties to work out their remedies by suitable amendments.

10.Per contra, the learned counsel for the respondent would submit that the application to amend the relief of declaration is factually and legally devoid of merit. According to him the application on hand is intended to protract the suit proceeding endlessly. It is his prime contention that the revision petitioner cannot maintain the instant application, since previously his earlier suit in O.S.No.124 of 1997 before the very same Court for the relief of Declaration and Injunction came to be dismissed for non prosecution. Thereafter the revision petitioner filed yet another fresh suit for declaration and injunction projecting same cause of action. The corresponding plaint of the revision petitioner was rejected by the trial Court holding that he is precluded from filing a fresh suit in respect of very same property alleging same cause of action.

11.It is his contention that in the said circumstance the petitioner has filed the instant suit before the vacation Court, Cuddalore for Injunction which after reopening of the Regular Court came to be renumbered as O.S.No.167 of 2005 and the same would

show that the filing of the suit and as well the filing of above Interim application to amend the prayer for declaration is unsustainable. Accordingly he seeks dismissal of the Civil Revision Petition.

12.Hearing upon the above rival submission and on perusal of records it is unfortunate for this Court to see that this is the 3rd suit filed by the revision petitioner claiming for the very same stretch of property under same cause of action.

13.It is seen that already the revision petitioner's plaint seeking for the relief of Declaration and Injunction in respect of very same property has been rejected by trial Court vide on order dated 07.01.2015.

14.For better appreciation the relief found in page 15 of the typed set of papers of the respondents dated 10.09.2014 is extracted here under:

"(a).By declaring the plaintiff's title over the suit property as absolute owner."

15.The said rejection of plaint is found challenged by the revision

petitioner by way of Appeal suit in A.S.No.03 of 2005 before the learned Sub-Court, Panruti. The Appeal is found dismissed vide a Judgment dated 11.04.2005 upholding rejection of revision petitioner's plaint.

16. In the above factual backdrop, it is seen now that the revision petitioner has filed the instant suit in O.S.No.165 of 2005 claiming cause of action as to the case has arisen on 03.08.2004 and also claiming cause of action that as to dismissal of his suit for default on 14.05.2005 and that the respondents attempted to trespass in the suit property.

17. In my considered view the dismissal of an earlier suit will not give a fresh cause of action. Again it is seen that it is the 3rd round of litigation claiming title over the very same suit property.

18. It is also seen that though the instant suit has been filed in the year 2005 and being the plaintiff, the revision petitioner had not get along with the case, but after about 5 years he had filed the instant amendment application. In such circumstance, it is obvious that the application is intended to protract the suit proceedings.

19. For the foregoing reasons, I do not find any merit in this Civil Revision petition and the same is hereby dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.02.2017

Note: Issue order copy on 12.12.2018.

Index: Yes

Internet: Yes

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To

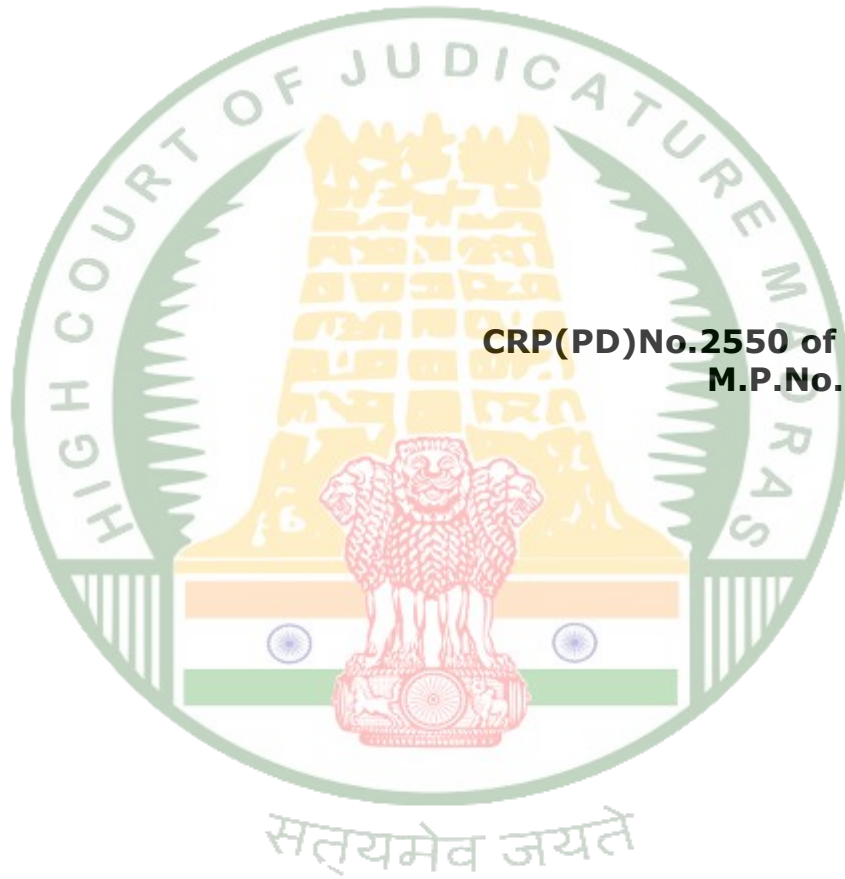
The District Munsif, Panruti.



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M.V.MURALIDARAN, J.

VS



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