

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM:

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

C.R.P.(PD).No.2856 of 2013 and
M.P.No.1 of 2013

Vimala

...Petitioner

Vs

1.Munusamy

2.Palani

...Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decretal order dated 22.03.2013 passed in I.A.No.1329 of 2012 in O.S.No.223 of 2007, by allowing the above Civil Revision Petition and consequently dismiss I.A.No.1329 of 2012 in O.S.No.223 of 2007 on the file of District Munsif Court, Chengalpattu.

For Petitioner : Mr.M.Mohideen Pichai

For Respondents : Mr.B.Pavalavammam

ORDER

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The first respondent initially filed a suit for declaration and consequential injunction. Subsequently, he filed an application for amendment to incorporate a prayer for recovery of possession. The application was allowed by the trial Court notwithstanding the objection raised by the petitioner. Feeling aggrieved, the unsuccessful respondent in I.A.No.1329 of 2012 is before this Court.

2. The learned counsel for the petitioner contended that the averments found in the affidavit filed in support of the application in I.A.No.1329 of 2012 is quite contrary to the evidence given by the first respondent as P.W.1. According to the learned counsel, in case the evidence of P.W.1 is taken in toto, it would prove as if the first respondent is not in possession of the property and her prayer was only in relation to the property in possession of the petitioner. According to the learned counsel, the trial Court was not correct in allowing the application for amendment.

3. I have also heard the learned counsel for the first respondent.

4. The first respondent filed the suit in question before the District Munsif Court, Chengalpattu, for a decree of declaration. The suit was resisted by the petitioner by filing written statement. Subsequently, the trial Court took up the matter for evidence.

5. Subsequent, to the examination of P.W.1, the first respondent filed an application in I.A.No.1329 of 2012 with a grievance that during the currency of the civil suit, he was dispossessed from the property. The first respondent therefore, sought the relief of recovery of possession. The trial Court, taking into account the background facts, allowed the said application.

6. It is the contention of the petitioner that the amendment would change the very nature of the suit and as such, the trial Court ought not to have allowed the said application. The contentions taken by the petitioner are all on the merits of the matter. Such a stage has not arisen while considering the application for amendment. The learned trial Judge has considered the contention in the affidavit filed in support of the application that the first respondent was dispossessed during the currency of the civil suit, and as such permission should be granted for the relief of recovery of possession.

7. The question as to whether the first respondent is entitled to a decree of recovery of possession is an issue to be decided by the learned trial Judge on merits. It is always open to the petitioner to resist the claim for recovery of possession by producing materials including the evidence already given by the first respondent as P.W.1. I am therefore, of the view that the petitioner has not made out a case for interference in the order passed by the learned trial Judge.

8. The petitioner is given four weeks time to file additional written statement. In case any additional defence is taken in the additional written statement, necessarily, additional issues should also be framed by the trial Court.

K.K.SASIDHARAN,J.

dna/gms

9. Since, the suit is of the year 2007, learned District Munsif, Chengalpattu is directed to dispose of the civil suit as expeditiously as possible and in any case, within a period of six months from the date of receipt of a copy of this order.

10. This Civil Revision Petition disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

12.06.2017

dna/gms

To

The District Munsif Court,
Chengalpattu.

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C.R.P.(P.D.) No.2856 of 2013

C.R.P.(PD).No.2856 of 2013

ABDUL QUDDHOSE, J.

Today the matter is listed under the caption “for extension of time”.

2. This Court by order dated 12.06.2017 disposed of CRP (PD) No.2856 of 2013 by directing the trial Court to dispose of the suit O.S.No.223 of 2007 on the file of learned District Munsif Court, Chengalpattu, within a period of six months from the date of receipt of a copy of that order. The learned District Munsif Court, Chengalpattu through learned Principal Subordinate Judge, Chengalpattu has addressed a letter dated 28.02.2018 to the Registry seeking extension of time for the reasons stated in the said letter.

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

4. This Court perused the letter dated 28.02.2018 sent by the

<http://www.judis.nic.in> learned Principal Subordinate Judge, Chengalpattu and is satisfied

ABDUL QUDDHOSE, J.

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with the reasons for not disposing of the suit within the time stipulated by this Court in the order dated 12.06.2017 in CRP (PD) No.2856 of 2013. Accordingly, this Court grants further time of six months for the trial Court to dispose of the suit in O.S.No.223 of 2007 from the date of receipt of the communication of this order from the Registry.



20.11.2018

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