



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.105 of 2017 (PD)

&

C.M.P. (MD) No.377 of 2017

1.Marichamy, S/o.Chinna Velappa Naicker
2.Ravi, S/o.Marichamy
3.Mahendran, S/o.Marichamy
4.Ganesan, S/o.Marichamy .. Petitioners

Vs.

1.Moorthy Naicker (Died), S/o.Verappa Naicker
2.Guruvammal, W/o.Moorthy Naicker
3.Pappuchamy, S/o.Moorthy Naicker
4.Chinnathai, D/o.Moorthy Naicker
5.Pappathi, D/o.Moorthy Naicker .. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.11.2016, made in I.A.No.57 of 2016 in I.A.No.32 of 2011 in A.S.No.46 of 2010, on the file of the Subordinate Court, Theni, dismissing the petition filed under Section 114 C.P.C., to review the order of dismissal in I.A.No.32 of 2011 for amendment of the plaint.

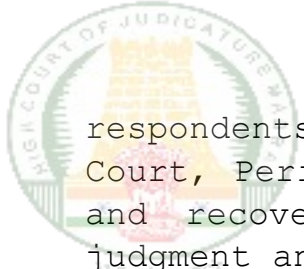
For Petitioners : Mr.K.Sekar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 04.11.2016, made in I.A.No.57 of 2016 in I.A.No.32 of 2011 in A.S.No.46 of 2010, on the file of the Subordinate Court, Theni, dismissing the petition filed under Section 114 C.P.C., to review the order of dismissal in I.A.No.32 of 2011 for amendment of the plaint.

2. Facts of the case:-

<https://hcservices.ecourts.gov.in/hcservices> These petitioners are the plaintiffs in O.S.No.161 of 2004 on the file of the District Munsif Court, Periyakulam and



respondents in A.S.No.33 of 2004 on the file of the Subordinate Court, Periyakulam. The petitioners filed the suit for declaration and recovery of possession. The said suit was decreed, vide judgment and decree dated 31.01.2005.

(ii) Against the said judgment and decree, dated 31.01.2005, the respondents herein filed A.S.No.33 of 2004 before the Subordinate Court, Periyakulam.

(iii) The said first appeal was transferred to the Subordinate Court, Theni and renumbered as A.S.No.46 of 2010 and the first appellate Court remanded the matter to the Trial Court on 26.06.2007.

(iv) Against the said judgment and decree, the petitioners filed C.M.A.(MD)No.103 of 2010 before this Court.

(v) This Court allowed the Civil Miscellaneous Appeal and remanded the same to the first appellate Court and directed the first appellate Court to examine the witness and mark the documents.

(vi) The first appeal was taken on file. The petitioners filed I.A.No.32 of 2011 in A.S.No.46 of 2010 for amendment of the plaint. The respondents opposed the said application. By order dated 29.10.2013, the learned Subordinate Judge, Theni, dismissed I.A.No.32 of 2011, for amendment.

(vii) The petitioners filed present I.A.No.57 of 2016 to review the order dated 29.10.2013, passed in I.A.No.32 of 2011, dismissing the application for amendment.

(viii) According to the petitioners, the learned Subordinate Judge, Theni, did not consider the documents marked by the petitioners and the respondents and also Exs.C.1 to C.4.

(ix) The respondents filed counter and contended that there is no error in the order dated 29.10.2013, passed in I.A.No.32 of 2011 by the learned Subordinate Judge, Theni, to review the said order. The petitioners ought to have filed Revision and Review is not maintainable.

(x) The learned Subordinate Judge, Theni, considering the averments mentioned in the affidavit and the counter affidavit and considering the materials available on record and also the judgments relied on by the learned counsel for the respondents, dismissed the application holding that there is no error in order dated 29.10.2013, passed in I.A.No.32 of 2011, dismissing the application for amendment.

3. Against the said order of dismissal dated 04.11.2016, the present Civil Revision Petition is filed.

4. The learned counsel for the petitioners submitted that the learned Subordinate Judge failed to consider the documents on record



and also the documents marked in the suit and without considering those documents, the learned Subordinate Judge, Theni, dismissed the application, which amounts to an error apparent on the face of the record.

5. I have heard the learned counsel for the petitioners and perused the materials available on record.

6. It is well settled that power of Court is very limited while considering the petition for review. The learned counsel for the petitioners cannot re-argue the matter on merits. Only if there is any error apparent on the face of the record, the Court can review the earlier order. In the present case, the contention of the learned counsel for the petitioners is that had the learned Subordinate Judge, Theni, considered the documents marked in the Trial Court, he would have allowed the application for amendment, but he has failed to consider those documents. The said contention cannot be taken as an error apparent on the face of the record, dismissing I.A.No.32 of 2011. The learned Subordinate Judge, Theni, has considered all the facts and the scope of review in proper perspective and has given cogent and valid reason for dismissing I.A.No.32 of 2011 and there is no irregularity or illegality in the order passed by the learned Subordinate Judge, Theni.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Theni.

+1cc to Mr.K.Sekar ,Advocate, SR.No.2871

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