



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).No.111 of 2017 and
CMP (MD).No.378 of 2017

1.S.Gurusamy
2.G.Nagammal

: Petitioners

Vs.

R. Chellammal

: Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order dated 16.11.2016 made in I.A.No.666 of 2016 in O.S.No.179 of 2008 on the file of the Principal District Munsif Court, Dindigul.

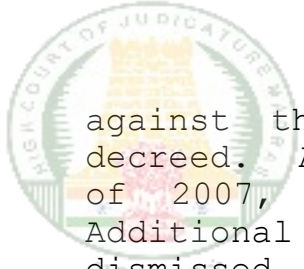
For Petitioner : Mr. S.R.Sureshkumar

O R D E R

This Civil Revision Petition is filed against the order and decreetal order dated 16.11.2016 made in I.A.No.666 of 2016 in O.S.No.179 of 2008 on the file of the Principal District Munsif Court, Dindigul.

2. The revision petitioners are the plaintiffs. The respondent is defendant in O.S.No.179 of 2008 on the file of the Principal District Munsif Court, Dindigul. The petitioners filed the above suit for declaration and recovery of possession. The respondents filed written statement and contesting the suit. The suit is at trial stage. The petitioners filed I.A.No.666 of 2016 for amendment of the plaint for including the prayer of permanent injunction restraining the respondent from interfering with their possession, after they take possession as per the Judgment to be rendered in the present suit. According to the petitioner, respondent is very influential person and has man power. If amendment is ordered, no prejudice would be caused to the respondent, but, if amendment is not ordered, the petitioners will be put to irreparable loss and hardship.

3. The respondent filed counter and opposed the said application and submitted that even before petitioners filed present suit in the year 2008, the respondent filed O.S.No.183 of 2007



against the petitioners, for partition and the said suit was decreed. Against the said Judgment and decree passed in O.S.No.183 of 2007, the petitioners filed A.S.No.3 of 2012 before the Additional District Court, Dindigul and the said appeal was also dismissed. The petitioners have not filed any further appeal. The petitioners are not entitled for amendment to include the prayer of injunction after eight years of filing of suit. When the main suit itself is for recovery of possession, the petitioners filed this application only to drag on the proceedings and prayed for dismissal of the application.

4. The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record, dismissed the application holding that the petitioners on mere apprehension that the respondent would interfere with their possession, if decree is passed in their favour and possession is taken as per the Judgment passed in the present suit. The learned Judge also held that the petitioners have to prove their case and title and obtain a decree for possession.

5. Against the said order, petitioners have filed the present revision.

6. The learned counsel appearing for the petitioners submitted that the learned Judge failed to see that the petitioners sought for amendment before commencement of trial. The learned Judge also failed to consider the Judgment of this Court and Hon'ble Apex Court that the amendment can be ordered at any time, if it is necessary.

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

8. The petitioners have filed suit for recovery of possession in the year 2008. The suit is pending trial. The petitioners on assumption that the suit will be decreed in their favour and after, they take possession from the respondent, the respondent would interfere with their possession. The learned Judge has rightly held that application filed by the petitioners, only on apprehension by petitioners that respondent would disturb their possession, after decree being passed in their favour. There is no error in the said reasoning of the learned Judge. The amendment can be ordered at any stage, only if the parties establishes necessities for such amendment to decide the issue in the suit in proper manner. In the present case, the petitioners have come out with the present application merely on apprehension and assumption.

9. In the circumstances, I hold that the learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application in I.A.No.666 of 2016 in O.S.No.179 of 2008. Further, the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality, warranting interference



by this Court.

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

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Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif Court,
Dindigul.

+ 1 CC TO Mr.S.R.SURESH KUMAR, ADVOCATE IN SR No. 3028

TRP

TE/PN : 13/03/2017 : 3P/3C

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