



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.276 of 2017

and

C.M.P. (MD) No.1360 of 2017

Peria Ramasamy
Defendant

... Petitioner /Petitioner/ 1st

Vs

1.Vairavapandi
2.Krishnaveni
3.Vairavasamy
4.Minor.Gopalakrishnan

... Respondents/ Respondents/
Plaintiffs

(Minor 4th Respondent rep.by
his father 1st Respondent)

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the order, dated 24.11.2016 passed in I.A.No.322 of 2016 in O.S.No.42 of 2012 by the District Munsif Court, Virudhunagar thereby allowing the Civil Revision Petition with cost.

For Petitioner : Mr. S.Anand Chandrasekar
for M/s.Sarvabhaumann Associates

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order, dated 24.11.2016 passed in I.A.No.322 of 2016 in O.S.No.42 of 2012 by the learned District Munsif, Virudhunagar.

2.The petitioner is the first defendant. The respondents are the plaintiffs. The respondents filed suit in O.S.No.42 of 2012 for declaration and injunction. The petitioner filed written statement stating that he has purchased the property from one Marichamy in the year 1972 by two sale deeds in the year 1972 and 1983 and he is the owner of the property. The petitioner's name is shown in the Revenue Records and he is in possession from 1972 till 2006. Based on the pleadings, issues are framed. Trial Commenced. The petitioner filed I.A.No.322 of 2016 for permission to file an additional written statement. In the additional written statement he has stated that he became owner of the suit property



by adverse possession and also stated that in the written statement itself he has made necessary averments with regard to possession.

3. The respondents filed counter affidavit and opposed the said application and submitted that the petitioner in the additional written statement is taking a contrary plea that of plea taken in the original written statement.

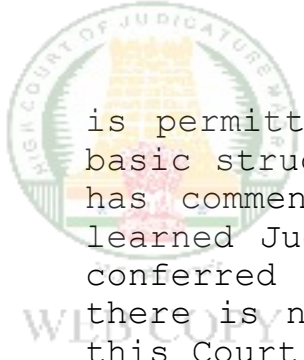
4. The learned Judge considering all the materials available on record, plaint, written statement dismissed the application holding that the present plea of adverse possession would change the basic structure of the suit.

5. Against the said order of dismissal made in I.A.No.322 of 2016, the petitioner has come out with the present Civil Revision Petition.

6. The learned counsel for the petitioner submitted that the learned Judge failed to see that the defendant is entitled to claim alternative plea. The petitioner can claim only one plea at the time of evidence and arguments. All the ingredients for claiming adverse possession for petitioner are already made in the written statement filed originally and additional written statement will not change the case of the defendant. The defendants are entitled to raise alternative or divergent plea in his written statement and there cannot be legal bar raising for alternative plea. Only proof affidavit of P.W.1 is filed, therefore no prejudice will be caused to the respondent.

7. I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

8. The respondents have filed suit for declaration that they are the owners of the suit property and for injunction. The petitioner in the written statement has contended that he has purchased the property from one Marichamy by the deed of sale in the year 1972 and 1983 and from that date onwards he is in possession and enjoyment of the property. In the written statement, he disputed the claim of respondent based on purchase by him from Marichamy and he is in possession as owner of the property. In the additional written statement now sought to be filed, the petitioner wants to contend that he has perfected title by adverse possession. The defendants cannot claim title or in alternative he has perfected his title by adverse possession. In the claim of adverse possession, the defendant must admit title of the plaintiff and must prove the date from which he is in possession, adverse to the interest of owner and to the knowledge of the owner for statutory period. The petitioner having claimed to be the owner of the property in the original written statement now cannot claim that he perfected his title by adverse possession. The learned Judge has rightly held that if such plea



is permitted to be raised by the petitioner it would change the basic structure of the claim of the petitioner. Further, the trial has commenced and proof affidavit of P.W.1 has been filed. The learned Judge considering all these facts by exercising his power conferred on him dismissed the application. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

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

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

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To

The District Munsif, Virudhunagar.

Copy To : The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.S.Anand Chandrasekar, Advocate Sr.No.7981

Gjm/MR/SAR-3-6.3.17-3p-5C

C.R.P (MD) No.276 of 2017

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