



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.1325 of 2016 (PD)

1.Thanka Lilly

2.Agnes

....Petitioners/Petitioners/Plaintiffs
Vs.

1.Menela

2.K.James

....Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 17.02.2016 passed in I.A.No.510 of 2013 in O.S.No.11 of 2013, on the file of the Learned Subordinate Judge, Padmanabhapuram, Kanyakumari District by allowing this Revision Petition and issue appropriate orders.

For Petitioners : Mr.G.Ramanathan

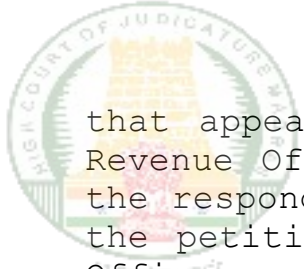
For Respondents : Mr.T.Arul

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order, dated 17.02.2016 passed in I.A.No.510 of 2013 in O.S.No.11 of 2013, by the Learned Subordinate Judge, Padmanabhapuram, Kanyakumari District.

2.The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit in O.S.No.11 of 2013 for injunction restraining the respondents from interfering with their peaceful possession and enjoyment of the suit property. The respondents filed written statement. In the written statement, the respondents denied the title of the petitioners and contended that the first respondent is in possession of the suit property and patta has been issued in favour of the first respondent. The petitioners filed I.A.No.510 of 2013 for amendment of plaint to include the prayer of declaration that the petitioners are absolute owners of the property and to declare the document executed by the second respondent in favour of the first respondent is null and void and for mandatory injunction to cancel the patta issued in favour of the respondents.

<https://hcservices.courts.gov.in/hcservices/courts/highcourts/madras/>
3.The respondents filed counter affidavit and furnished the details about their title to the property. They also contended



that appeal filed before Revenue Divisional Officer and District Revenue Officer were also dismissed and patta given in favour of the respondents was confirmed. No further proceeding was taken by the petitioners against the order passed by the District Revenue Officer.

4.The learned Judge considering all the materials on record, dismissed the application for amendment holding that Civil Court cannot issue mandatory injunction directing the Revenue Authorities to cancel the patta and that petitioners have not given any reason for including the prayer of declaration, when even before filing of the suit, he was aware of the fact that respondents are disputing their title.

5.Against the said order of dismissal made in I.A.No.510 of 2013, the petitioners have come out with the present Civil Revision Petition.

6.The learned counsel for the petitioners submitted that the learned Judge erred in dismissing the application that amendment sought for is filed after framing issues and failed to see that amendment sought for does not change the nature of the suit. The respondents are disputing the title of the petitioners and therefore, the relief of declaration to clear the doubt created about the title of the petitioners, is necessary. The learned Judge failed to see at any stage of the suit, amendment can be allowed.

7.The learned counsel for the respondents submitted that the petitioners even before filing of the suit were aware that the respondents are disputing the title of the petitioners. By amendment entire character of the suit is changed and new cause of action is introduced. Civil Court is not competent to issue mandatory injunction to the Revenue Authorities with regard to patta proceedings. The petitioners initiated proceedings before the Revenue Authority to cancel the patta ,which was dismissed and appeal filed by them were also dismissed.

8.I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and also perused all the materials available on record.

9.As far as amendment sought for to include the relief of mandatory injunction to issue direction to the Tahsildar to cancel the patta issued in favour of the respondents, is not maintainable. The learned Judge has held that as per the Provisions of Patta Passbook Act, there is a bar to the Civil Court to maintain the suit with regard to issue or cancellation of patta. The petitioners had already initiated proceedings for cancellation of patta and the petition and appeal filed by them



were dismissed. Therefore, there is no error, illegality or irregularity in the order of learned Judge rejecting the application for amendment with regard to mandatory injunction.

10. As far as amendment with regard to relief of declaration is concerned title of the petitioners is disputed. In such circumstances, the relief of declaration sought for by the petitioners is maintainable. It is well settled that cause of action for the relief of injunction and relief of declaration are different. It is also well settled that amendment of plaint to include the relief of declaration can be allowed even at the stage of Second Appeal. In view of well settled judicial pronouncement, the order of the learned Judge dismissing the application with regard to amendment to include the relief of declaration is set aside. Therefore, I.A.No.510 of 2013 is allowed in respect of the "A" and "C" prayer and with regard "B" prayer is confirmed.

11. In the result, the Civil Revision Petition is partly allowed. No costs.

12. The suit is of the year 2013 and the issues were framed. The learned Sub Judge, Padmanabhapuram is directed to dispose the suit in O.S.No.11 of 2013 as expeditiously as possible, in any event not later than, 31st August, 2017.

sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Padmanabhapuram.
Kanyakumari District.

+1 cc to Mr.G.Ramanathan, Advocate, SR.No:10176

+1 cc to Mr.T.Arul, Advocate, SR.No:2741

Am

AE/PM PN/13.03.2017/3P/4C

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