



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2017

CORAM:

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P. (MD) No.1676 of 2016 and
C.M.P. (MD) No.8172 of 2016

Vellaichamy : Petitioner/Petitioner/Plaintiff
Vs.

1.Karuppiah,
2.Mahalingam,
3.Jayaraman,
4.Anand,
5.Jayapandi,
6.Kannan,
7.Gandhimathi,
8.Amutharani,
9.Veerayee.

: Respondents/Respondents/Defendant

PRAYER: Civil Revision Petition is filed under Section 151 of CPC against the fair and decreetal order made in I.A.No. 754 of 2015 in O.S.No.116 of 2014 dated 29.10.2015 on the file of learned District Munsif, Devakottai.

For Petitioner : Mr.J.Anandkumar
For Respondents : No appearance

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order made in I.A.No. 754 of 2015 in O.S.No.116 of 2014 dated 29.10.2015 on the file of learned District Munsif, Devakottai.

2. The Revision Petitioner has filed a suit in O.S.No.116 of 2014 seeking injunction against the respondent. In response to the plaint, the defendants have filed written statement denying the title of the plaintiff. Therefore, the plaintiff has filed I.A.No.754 of 2015 to amend his plaint including declaration of title. The trial court has dismissed the application, on the ground that such an amendment cannot be entertained in view of an Order 2 Rule 2 of CPC and has pre-concluded that the plaintiff has waived the right. Aggrieved by that, the plaintiff has preferred the Revision Petition, on the ground that Order 2 Rule 2 of C.P.C. does not attract to the facts of the case and he was forced to amend his plaint including the relief of declaration of title.



In view of the denial of title by the defendants and he has promptly taken out the application immediately after filing of the written statement, before commencement of the trial and therefore, the trial court ought to have allowed his prayer instead dismissed the application which is erroneous and illegal.

3. Heard the learned counsel appearing for the Revision Petitioner.

4. The learned counsel appearing for the revision petitioner submitted that while the plaintiff has claimed title over the property, based on the partition deed, which form part of the plaint as Document No.1, the defendants have taken contra plea that the plaintiff is not absolute owner of the property and the alleged partition deed ought to have been taken place between the families of the plaintiff on 07.06.1980, pursuant to the earlier partition dated 07.03.1949 is false and fabricated one. In view of the averments made in the written statement, the plaintiff has taken out the amendment petition. The reason for dismissing the amendment petition by the trial court is not in consonance with the law. In fact the Supreme Court in the Judgment reported in **(2008) 4 Supreme Court Cases 594 (Anathula Sudhakar Vs. P. Buchi Reddy (dead) by LRs and another)** has categorically held that when there is cloud in title the plaintiff cannot stop with with seeking injunction he should seek for relief of declaration of title which precisely the plaintiff has resorted to that relief which has been wrongly rejected by the trial court. Hence, the order passed in I.A.No.754 of 2015 in O.S.No.116 of 2014 is hereby set aside and the same is allowed.

5. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

District Munisif,
Devakottai.

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