

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.10.2018

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(PD).No.3112 of 2011

and

M.P.No.1 of 2011

R.Sambandan

... Petitioner

Vs.

Sivagami Ammal

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to allow the revision petition and set aside the order dated 23.03.2011 passed in I.A.No.10 of 2011 in O.S.No.65 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Arcot.

For Petitioner : Mr.G.Prabakaran

For Respondent : Not ready in notice

ORDER

The above Civil Revision Petition has been filed challenging the order dated 23.03.2011 passed in I.A.No.10 of 2011 in O.S.No.65 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Arcot, Vellore in allowing the amendment petition filed by the respondent

who is none other than the mother of the revision petitioner.

2. The suit was filed by the respondent herein for permanent injunction restraining the revision petitioner from interfering with the respondent's peaceful possession and enjoyment of the suit property. The following is the suit scheduled properties.

"SCHEDULE OF PROPERTIES"

In Vellore District, Arakonam Registration District, Kalavai Sub-Registrar office, Kalavai Puthur Village, S.No.123/3, Bajanai Koil Street, on the southern side bounded to the north of Palani backyard, to the east of malar house site, to the south of the said street and to the west of shanmugam vacant site in which East to West 18 feet North to South 120 vacant site in which the RCC house constructed with the area of East to West 18 feet and North to South 30 feet with uppertenances and inclusive of water tap connection. Door No.44/22.

In same S.No. the vacant site measuring East to Wet 18 feet North to South 90 feet bounded

*to the north of narayanasamy Gounder vacant site,
East and South of Muruga gounder vacant site and to
the west of Murugesan vacant site."*

3. The respondent had claimed right to the suit property on the basis of a Will executed by her husband Mr.Rathina Gounder. It is her case that after the marriage, their son/revision petitioner had deserted his parents and was living with his wife. Taking note of the conduct of their son, father had executed the Will. Recently, after the death of his father, the revision petitioner has come to the village and threatened to dispossess the plaintiff/respondent from the suit property. Therefore, this suit is filed.

4. The revision petitioner set up title over the suit property that he has been in possession for 50 years. It is noteworthy that on the date of filing of the suit itself, the revision petitioner was aged about 50 years and therefore it is clear that the revision petitioner has been in possession of the property only as the child of his parents. He had totally denied the right of the respondent to the suit property. The suit was filed in the year of 2009 in O.S.No.65 of 2009. The respondent came forward with an amendment petition and in the affidavit filed in support of the amendment petition, she would submit that the

revision petitioner was residing in one room, which is referred to as the "B Schedule" in the amendment petition and she was residing in the suit house. It was her case that since the respondent was not taking care of her in her old age, she left the suit property on 15.02.2010 and left her household articles locked in one room in the suit property and moved in along with her brother. The revision petitioner is accordingly not entitled to continue to live in the property and is liable to be evicted from the said portion. For these reasons, she filed an amendment petition to include the prayer of recovery of possession of the "B schedule property" as well as the amendment referring to the schedule property.

5. The amendment petition was resisted by the revision petitioner by contending that the very suit itself is not maintainable. Despite the contest, the learned District Munsif of Arcot, had allowed the amendment application on the basis of the admission of the respondent as D.W.1. The learned Judge said that the amendment does not change the character of the suit or cause prejudice to the respondent. Challenging the said order, the revision petitioner is before this Court.

6. Heard Mr.G.Prabakaran, learned counsel for the revision

petitioner.

7. It is seen that the amendment is being necessitated on account of the subsequent events. When the suit was filed, the respondent/plaintiff herein was in possession of the property and on a very reading of the affidavit in support of the amendment petition it is seen that she has been forced out of the house only on the ground that she is aged and the revision petitioner who is her only son was not taking care of her until she left the house on 15.02.2010 and therefore, since she had claimed right on the basis of a Will, the revision petitioner, by filing a counter, is trying to set up a separate title to the property and therefore, in these circumstances, the amendment was necessitated. I find no infirmity in the order passed by the learned District Munsif-cum-Judicial Magistrate, Arcot, Vellore.

8. In the result, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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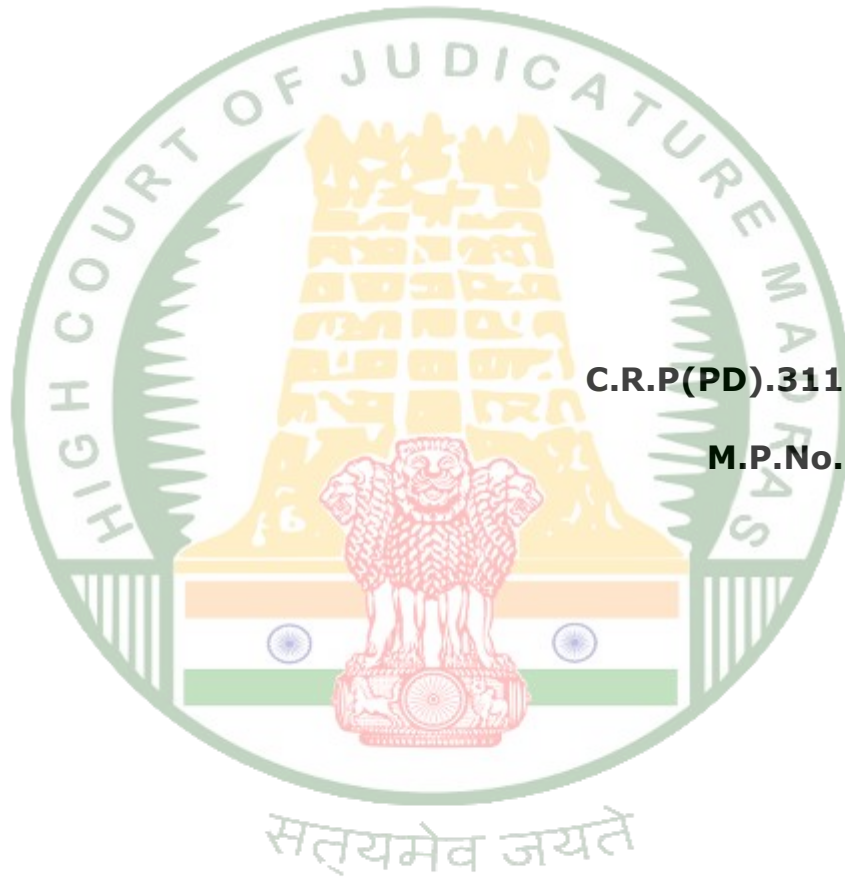
Index:Yes/No
Speaking/Non-speaking order
jen/tsg

P.T.ASHA,J.

tsg/jen

To

Learned District Munsif-cum-Judicial Magistrate,
Arcot, Vellore.



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