

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.31 of 2012
& M.P.No.1 of 2012

1. Karuppusamy

2. Karunambal

... Petitioners

Vs

S.Nataraj

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 20.01.2011 in I.A.No.814 of 2010 in O.S.No.2141 of 2009 on the file of the Principal District Munsif Court, Coimbatore.

For Petitioners : Mr.C.R.Prasanan

For Respondent : Not ready in notice

ORDER

This Civil Revision Petition is filed, challenging the order passed by the learned Principal District Munsif, Coimbatore in I.A.No.814 of 2010 in O.S.No.2141 of 2009, in and by which the application filed by the revision petitioner for amending the plaint has been dismissed.

2. The brief facts for disposing of the Civil Revision Petition are as follows.

3. The Civil Revision Petitioner has filed a suit in O.S.No.2141 of 2009 on the file of the learned Principal District Munsif, Coimbatore for the relief of permanent injunction restraining the Defendants/Respondents and his men, agents etc., from causing trouble in use and enjoyment of the B Scheduled property (by means permanent injunction) and restraining them from trespassing into the C and A schedule and not to damage the C Schedule property.

4. The A Schedule property consisted of two items of property and the B Schedule property is the common pathway situated between the items 1 and 2 of the A Schedule property. C Schedule property is described as the south-east corner of item 2 of the A Schedule property which is a tiled shed.

5. The case of the revision petitioners in their plaint is that they have purchased the suit properties under sale deeds dated 08.11.1990 and 25.03.1991 and that they have been in peaceful possession and enjoyment of the same without any disturbances since then.

6. The respondent herein who is having a property adjacent to the suit property is now causing obstructions to the plaintiffs'/ revision petitioners use of the B Schedule path way by putting thorny bushes and also has damaged the wall of the C Schedule property. The revision petitioners would plead that the thorny bushes were removed by them with the help of their son and relatives.

7. The respondent herein had filed their written statement *inter alia* contending that right from the year 1987, he has been in possession and enjoyment of his property, which he had got by virtue of partition deed between himself and his brother. It is his case that he has been carrying agricultural activities in his land and there is a tiled shed for cattle which is over 30 years old and it is very old tiled shed. The respondent denied the allegations of the revision petitioners that he damaged the C schedule wall. The respondent would reiterate that he has in no manner interfered with the revision petitioners use and enjoyments of the common path way and he has not committed anything as alleged.

8. Pending the above suit, the revision petitioners have come forward with an application in I.A.No.814 of 2010 to amend the plaint and the reason for amending the plaint has been stated in Paragraph 9 of the affidavit filed in support of the petition. The amendment included the relief of mandatory injunction.

9. The respondent herein denied the various averments

contained in the affidavit filed in support of the petition for amendment and stated that at no point of time he had trespassed into the petitioner's property and caused damage in their wall.

10. The learned Principal District Munsif, Coimbatore dismissed the said application on the ground that the petition is lacking in details. The revision petitioners alleged that the wall in the C Schedule has been damaged.

11. Heard Mr.C.R.Prasanan learned counsel for the petitioner and perused the papers. A reading of the details of the amendment which is sought to be carried out in the plaint does not show clarity. It is not known even in the original plaint the revision petitioners had contended that the wall has been damaged by the respondent no further details regarding the kind of construction that is said to be put up, the place in which, such construction is being made etc. had been pleaded which assumes

significance and the relief now sought for is for a mandatory injunction. In such circumstances unless the property is identified the decree if passed cannot be executed. The affidavit filed in support of the petition has also not thrown much light on the actual amendment that is sought for.

12. The learned Principal District Munsif, Coimbatore has rightly dismissed the petition and find no infirmity in the order passed by the learned Principal District Munsif, Coimbatore.

13. The learned counsel for the petitioner had produced the judgement of this Court reported in **K.Shanmugam & two others V2. S.Lakshmi Ammal (1995 (II) CTC 461)** to canvas the argument that so long as the cause of action remains intact and relief is based on subsequent events that had taken place during the pendency of the suit amendment can be ordered. However in this application, it was not dismissed based on the subsequent event that took place during the pendency of suit, but

on the ground that the petition was bereft of details. Further, even in the original plaint there is a reference to the wall being damaged. Therefore the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Speaking order/non-speaking order

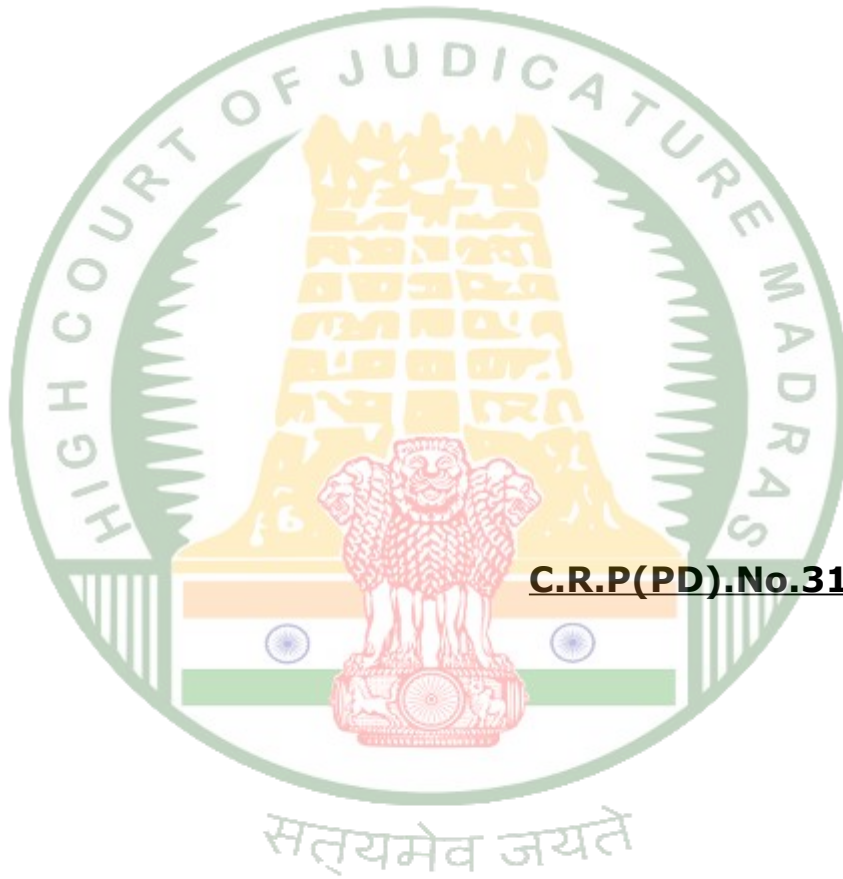
To

1. The Learned Principal District Munsif Court,
Coimbatore.

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P.T.ASHA, J.,

ssr



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