

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2018

CORAM:

The HONOURABLE **MS. JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.3844 of 2014

and M.P.No.1 of 2014

1.Chinnammal
2.P.Vadivel

.. Petitioners

Vs.

1.Narayana Gounder
2.Dhandapani
3.Sumathi
4.Boopathi
5.Kandasamy

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 02.07.2014 made in I.A.No.1317 of 2013 in O.S.No.1324 of 2012 on the file of the I Additional District Munsif Court, Salem.

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For Petitioners : Mr.B.Gopalakrishnan

for Mr.R.Nalliyappan

For Respondents : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 02.07.2014 made in I.A.No.1317 of 2013 in O.S.No.1324 of 2012 on the file of the I Additional District Munsif Court, Salem.

2.The petitioners are the plaintiffs and respondents are the defendants in O.S.No.1324 of 2012 on the file of the I Additional District Munsif Court, Salem. The petitioners filed the said suit for permanent injunction restraining the respondents from trespassing into the suit property. The respondents 1, 3 to 5 filed written statement on 21.10.2013 and are contesting the suit. In the written statement, the respondents 1, 3 to 5 mentioned about the two sale deeds dated 23.01.1975 and 04.04.1984. The petitioners filed I.A.No.1317 of 2013 under Order VI Rule 17 and Section 151 C.P.C. for amendment of the plaint to include the relief of declaration that the first petitioner is the absolute owner of 'A' schedule property based on the sale deed dated 27.06.1972 bearing document No.1407/1972 and to declare the sale deed dated 23.11.1975 bearing document No.125/1975 in respect of 'B' schedule property and the sale deed dated 04.04.1984 bearing document No.836/1984 in respect of 'C' schedule property as null and void and are not binding on the petitioners.

3. According to the petitioners, they came to know about the execution of the sale deeds only from the written statement filed by the respondents 1, 3 to 5. Though the respondents have not denied the title of the petitioners and by the two sale deeds mentioned by respondents, there is a semblance of denial of title and a cloud cast on the title of the first petitioner over the suit property. The respondents did not file any counter affidavit and they were set exparte.

4. The learned Judge considering the averments made in the affidavit and materials available on record, dismissed the application on the ground that the petitioners are introducing a new cause of action.

5. Against the said order of dismissal dated 02.07.2014 made in I.A.No.1317 of 2013 in O.S.No.1324 of 2012, the present Civil Revision Petition is filed by the petitioners/plaintiffs.

6. Heard the learned counsel for the petitioners and perused the materials available on record. Though the notice was served on the respondents and their names are printed in the cause list, there is no representation on behalf of the respondents either in person or through counsel.

7.It is well settled that when a suit is originally filed for injunction, subsequently an amendment can be allowed to include the relief of declaration of title even at the belated stage. The learned Judge failed to consider the well settled principle and erred in dismissing the application on the ground that the petitioner is seeking to introduce a new cause of action. Whether the petitioners came to know about the sale deeds in question only from the written statement filed by the respondents 1, 3 to 5 or whether they were aware of the same earlier can be decided only after the conclusion of trial by the evidence let in by the parties. Therefore, the impugned order of the learned Judge dated 02.07.2014 is liable to be set aside and it is hereby set aside.

8.In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.03.2018

Index:Yes/No

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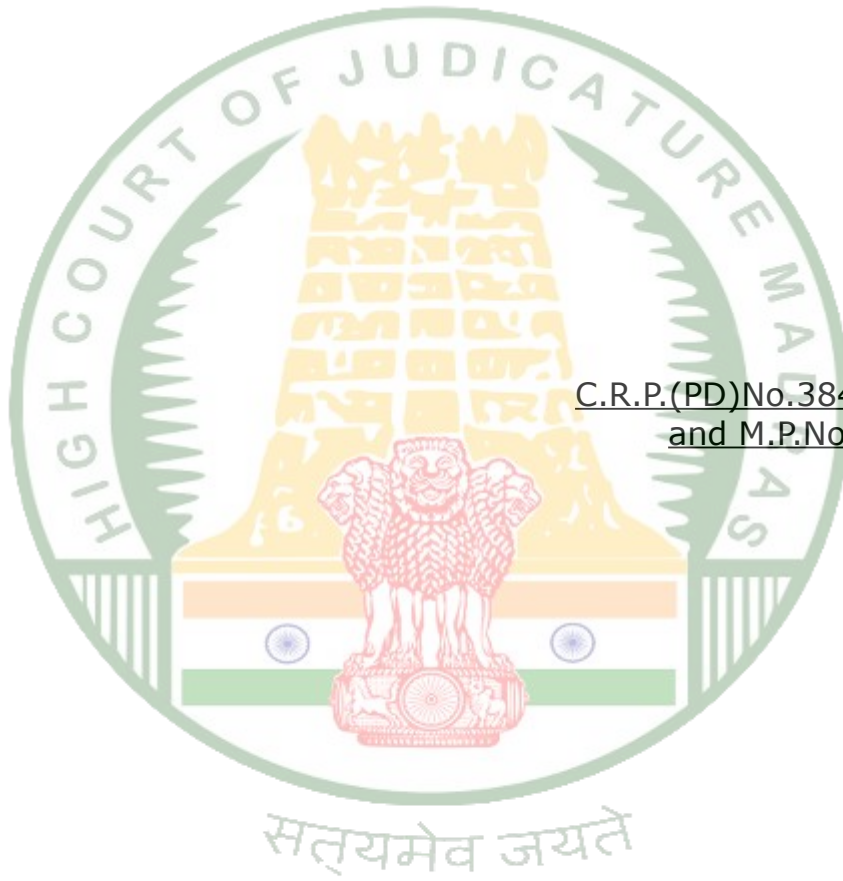
To

I Additional District Munsif, Salem.

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V.M.VELUMANI,J.

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