



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2018

Delivered on : 21.08.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) Nos.2473 and 2474 of 2015
and
M.P. (MD) Nos.1 and 1 of 2015

Sivasubramaniya Nadar

.. Petitioner in both the CRPs

vs

Chelladurai

.. Respondent in both the CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the Fair and Decreeal Order dated 02.09.2015 passed by the learned Principal Subordinate Court, Nagercoil, made in I.A.Nos.428 and 429 of 2015 in O.S.No.212 of 2013.

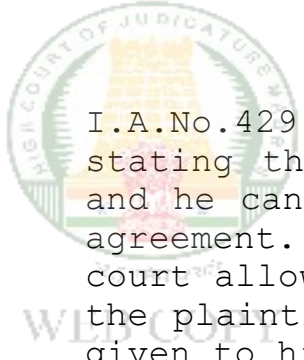
(In both the CRPs)

For Petitioner : Mr.V.Meenakshi Sundaram

For Respondent : Mr.N.Tamilmani

COMMON ORDER

The Respondent is the plaintiff and has filed the suit in O.S.No.212 of 2013 on the file of the learned District Munsif Court, Nagercoil for permanent injunction against the petitioner herein. The Petitioner is contesting the suit saying that he is in possession and enjoyment of suit property. Admitted case of both parties is that the suit property originally belonged to Sivanananitha Perumal Nadar, who died without any issues. The Respondent claims to have the son of the one Rasammai, who is the sister of Thankammai, i.e. the 2nd wife of said Sivanananitha Perumal Nadar. The Petitioner claims to have the brother's son of Sivanananitha Perumal Nadar. After completion of evidence and the suit was posted for arguments the respondent has filed an application in I.A.No.428 of 2015 to re-open the evidence and



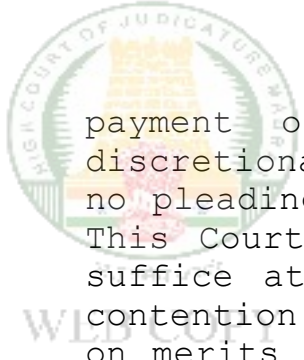
I.A.No.429 of 2015 to permit for examining the tenant as witness stating that he has let out a portion of property to the tenant and he can prove the same by examining him and marking the rental agreement. The same was opposed by the petitioner and the trial court allowed the petition on payment of cost, with a finding that the plaintiff has to prove his case and thus an opportunity to be given to him. The same is challenged by the petitioner.

2.The Learned counsel for the petitioner reiterated the grounds and submitted that there is no pleading available to the effect of tenancy and the petition is filed to fill up the lacuna and the same is liable to be dismissed. Per contra, the learned counsel or the respondent argued that the trial court has exercised its discretion in a proper way as it is for the plaintiff to prove his case and it is not a case of filling up the lacuna, particularly when the petitioners are not able to show that what the point to be filled up, which was lacuna. Further the examination of the tenant will not affect anyone since the suit is one for permanent injunction.

3.I heard Mr.V.Meenakshi Sundaram, learned counsel for the petitioner and Mr.N.Tamilmani, learned counsel for the respondent in both the civil revision petitions and perused the entire materials available on record.

4.It is seen from the records and the order of trial court it has passed an order exercising the discretion in favour of the respondent for re-opening the evidence on payment of cost to the petitioner herein. Admittedly both the petitioner and respondent are fighting for the property, which was owned by one Sivanananitha Perumal Nadar, who died without any issues. Both are claiming right and possession as class II legal heirs. No doubt, the petition was filed after the evidence of both parties was over and the suit was posted for arguments. The law is well settled that the re-opening of evidence for recalling some witness is different from examining an additional witness on the side of the parties after re-opening. Here the petitioner has not pointed out any of the specific omissions to be filled by examining the additional witness but he is simply canvassing the same.

5.On perusal of the records, it transpires that the case of the plaintiff is that he is in possession and enjoyment of the disputed property and he wanted to examine the tenant in respect of the portion of property as an additional witness to prove his possession. The Trial Court has passed an order with a finding that the respondent who is the plaintiff in the suit must be given a fair chance to prove his case and allowed the petition on



payment of cost. The said order is passed exercising the discretionary jurisdiction. The Petitioner contends that there is no pleading about the tenancy and as such no one can be examined. This Court is of the view that the pleading about possession is suffice at this stage to examine the additional witness and the contention of the petitioner about the pleadings are to be tested on merits and therefore the said contention cannot be accepted at this stage.

6.The Trial Court being the court of facts and watching the proceedings of trial has permitted the re-opening and permitting to examine the additional witness by exercising the discretion. This Court confirms that the exercise of discretion by the trial court is not beyond law, when it sees the litigation is in respect of the property of the person, who had no direct issues and both parties are claiming right as class II heirs. Thus there is no error committed so as to warrant interference in the order of court below. Accordingly the revisions are liable to be dismissed.

7.In fine, the Impugned Order passed in I.A.Nos.428 and 429 of 2015 in O.S.No.6 of 2013 dated 02.09.2015 on the file of the learned District Munsif Court, Nagercoil is confirmed and the revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Principal Subordinate Court,
Nagercoil.

+ 1 CC TO MR.D.NALLATHAMBI, ADVOCATE IN SR NO. 79607
+ 2 CC TO MR.N.TAMILMANI, ADVOCATE IN SR NO. 79324 &79325

VSV

BU/MK/RSK/SAR-2 : 19.09.2018 : 3P/5C

order made in
C.R.P. (MD) (PD) Nos.2473 and 2474 of 2015
and

M.P. (MD) Nos.1 and 1 of 2015
21.08.2018