



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 12.06.2018
DELIVERED DATED : 03.07.2018

WEB COPY

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No.2265 of 2016
and
CMP (MD) No.10462 of 2016

Rajpriyan

...Petitioner

-vs-

1.Subramanian
2.Rukmaniammal
3.Ramalingam
4.Balasubramanian
5.Rubini
6.Jothilingammal
7.Padma

...Respondents

(Respondents 2 & 3 herein remained
Ex-parte before the trial Court. Hence,
they are given up in this CRP)

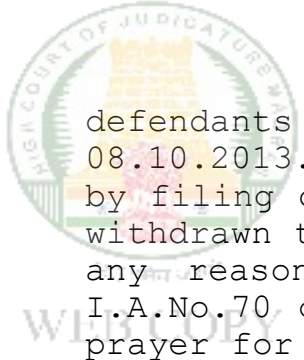
PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree made in I.A.No.70 of 2016 in O.S.No.342 of 2013 dated 30.09.2016 on the file of the learned Principal District Munsif Court, Srivilliputtur.

For Petitioner	: Mr.H.Arumugam
For Respondents	: Mr.S.Ramesh
	for Mr.P.Subramanian (for R1)
	R2 & R3 - Ex-parte
	Mr.K.N.Balasubramanian (for R4)
	No Appearance (for R5 to R7)

O R D E R

The Revision Petitioner has filed this petition against the order and decree made in I.A.No.70 of 2016 in O.S.No.342 of 2013 dated 30.09.2016 on the file of the learned Principal District Munsif Court, Srivilliputtur.

2.The case of the petitioner is that the Petitioner is the 7th Defendant in the suit filed by 1st respondent herein for permanent injunction in O.S.No.342 of 2013 on the file of the learned Principal District Munsif Court at Srivilliputtur. Pending suit, the 1st respondent filed a petition in I.A.No.1314 of 2014 to amend the plaint, adding the relief of mandatory injunction and restoration of possession of suit property, stating that the



defendants illegally dispossessed him from the suit property on 08.10.2013. The said petition was opposed by the petitioner herein, by filing counter and after enquiry was heard the 1st respondent has withdrawn the petition, without any liberty and also without stating any reason. Later the petitioner filed another application in I.A.No.70 of 2016 on 06.01.2016 for amendment of plaint adding the prayer for directing the defendant to hand over and delivery of suit property. The Petitioner herein opposed the same on the ground that the earlier application was withdrawn without liberty, that too after enquiry, as such same is not maintainable and further the relief is also barred by limitation and as well as Court fee mentioned therein was not correct. The trial Court rejected the contentions of the Petitioner and allowed the petition, by giving a finding that all objections could be considered only during trial. The 1st respondent has challenged the said order in the present Revision petition.

3.The Learned Counsel for the Petitioner submitted that under Section 6 of Specific Relief Act, six months period is contemplated for filling the suit for recovery of possession, by the person who was dispossessed without his consent and admittedly the alleged dispossession was on 08.10.2013 but the amendment petition was filed only on 06.01.2016. Therefore, the proposed amendment is hopelessly bared by limitation. He further submitted that the present application is also not maintainable since earlier application filed for same relief was withdrawn, after enquiry and without any liberty. The 1st Respondent having withdrawn the petition on his own whims cannot maintain the present petition. He relied upon the judgement in Voltas Limited Vs Rolta India limited reported in 2014 (2) SCC 516 for the proposition that the time barred claim cannot be allowed by amendment.

4.Per contra, the learned counsel for the 1st respondent relied upon judgement in the case of G.K.Parthasarathy vs K.Gopal & another reported in 2016 (2) TLNJ 383 (CIVIL) and argued that the present amendment is not barred by limitation and as such the order of trial Court is perfectly right and prayed for dismissal of revision.

5.I heard Mr.H.Arumugam, learned counsel for the petitioner, Mr.S.Ramesh for Mr.P.Subramanian, learned counsel for the 1st respondent and Mr.K.N.Balasubramanian, learned counsel for the 4th respondent and perused the entire material available on records. No representation on behalf of the respondents 5 to 7.

6.The judgement relied upon by the learned counsel for 1st respondent in the case of G.K.Partha Sarathy vs K.Gopal & another reported in 2016 (2) TLNJ 383 (CIVIL) has held that the suit for possession could be filed within a period of 12 years. There is no quarrel over the said proposition of law.



7. However the other contention of petitioner that the earlier application filed for amendment was withdrawn without any liberty, that too after enquiry and thus the 1st respondent cannot maintain the petition, on his own whims is having considerable force. The bare perusal of the affidavit filed in earlier application for amendment and the present one clearly shows that everything is similar, while so this Court not in a position to understand as to why the earlier application was withdrawn by 1st respondent, that too without any liberty. When the petitioner has urged the maintainability of the petition the learned counsel for the 1st respondent has not come forward with any explanation for withdrawing the earlier application for amendment. It is not will and sweet of the person to file one application and withdraw the same and later filing another application for the same relief, without any regard to the proceedings of the Court. The conduct of 1st respondent by filing an application seeking amendment and withdrawing it during enquiry, on his own, without getting any permission from Court and latter on filing another application with the same affidavit, cannot be accepted and appreciated.

8. Therefore, this Court is of the view that the 1st respondent cannot maintain the present petition. But the trial Court has not considered this aspect and simply allowed the petition, which is not correct and the same is liable to be interfered with.

9. In the result, this Civil Revision Petition is allowed and the impugned order passed by the trial Court is set aside and the petition in I.A.No.70 of 2016 is dismissed without cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Srivilliputtur.

+1cc to M/S.V.Raghavachari, Advocate SR.No. 70790
+1cc to M/S.K.N.Balasubramanian, Advocate SR.No. 71414
+1cc to M/S.H.Arumugam, Advocate SR.No. 70779

order made in
C.R.P. (MD) No.2265 of 2016
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