



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.07.2018
CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

C.R.P(PD) (MD)No.1015 of 2013
and M.P. (MD)No.1 of 2013

Narayanasamy Velalar

...Civil Revision Petitioner/
Petitioner/Plaintiff

-Vs-

Pazhaniyappa Velalar (Died)

1.Senthil Kumar

...Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed, Under Article 227 of the Constitution of India, praying to allow the Civil Revision Petition by setting aside the fair and decreetal order passed in I.A.624 of 2011 in O.S.No.131 of 2010 on the file of the District Munsif, Pattukottai dated 18.02.2013.

For Petitioner : Mr.V.Chandrasekar
For Respondent : No Appearance

O R D E R

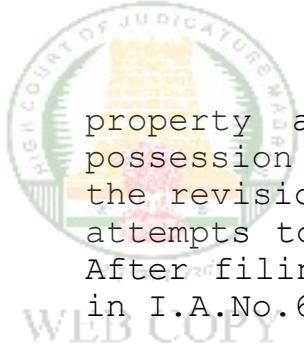
The Civil Revision Petition is filed to set aside the fair and decreetal order dated 18.02.2013 passed in I.A.No.624 of 2011 in O.S.No.131 of 2010 on the file of the District Munsif, Pattukottai.

2. Heard the learned counsel for the petitioner and perused the materials on record carefully.

3. The plaintiff in O.S.No.131 of 2010 on the file of the District Munsif Court, Pattukkottai is the Civil Revision Petitioner. The Civil Revision Petition is filed by the plaintiff challenging the order of the trial court dismissing the petition filed by the revision petitioner to amend the plaint to introduce a new prayer seeking alternative relief of declaration of title and recovery of possession.

4. The brief facts, which are necessary for the disposal of the Civil Revision Petition, are as follows:

4.(i)The revision petitioner has filed the suit in O.S.No.131 of 2010 on the file of the District Munsif Court, Pattukottai for declaration of title and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property. The suit property has been described as a vacant land to an extent of 16 cents in Survey No.74-1A2, Alathur Village. In the suit, ofcourse, the revision petitioner has pleaded that he is in peaceful possession and enjoyment of the suit



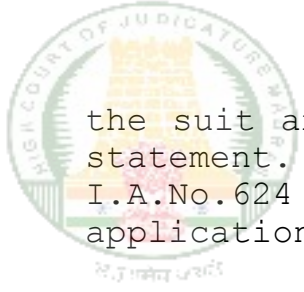
property and he has also explained in what manner he is in possession and enjoyment of the suit property. It is also pleaded by the revision petitioner in the plaint that the defendants are making attempts to put up construction by entering into the suit property. After filing the suit, the revision petitioner filed an application in I.A.No.624 of 2011 for amending the plaint.

5. The revision petitioner in the affidavit filed in support of the petition for amendment has pleaded that the defendants are having their residential house nearby the suit property and that they have also changed the physical features of the suit property and obtained an order for appointment of an Advocate Commissioner. The petitioner has admitted in the affidavit filed in support of the petition that the defendants have encroached into the suit property after filing of the suit.

6. The trial court is of the view that the revision petitioner, who has pleaded that the defendants have encroached the property after filing of the suit, cannot seek for recovery of possession as an alternative prayer.

7. The reasoning of the learned Judge appears to have some logic, but cannot be appreciated having regard to the admitted facts of the case. In the affidavit filed in support of the petition, the revision petitioner has stated that the respondents/ defendants have extended their thatched shed over the suit property and encroached. Though it is stated by the defendants that the encroachment was done about 15 years back, the revision petitioner has explained in the affidavit that the encroachment is only after the suit. Through the nature of averments found in the affidavit filed in support of the petition, it can be seen that the suit property is a vacant land and the encroachment by the defendants is only in respect of a small area by putting up a temporary shed, this does not affect the case of the petitioner in the original plaint that he is in possession of the entire property. The court may take this as an admission of the plaintiff that in a portion of the property the defendants have put up a construction after suit. Hence, by way of abundant caution, the plaintiff/revision petitioner wants to amend the plaint with the alternative prayer for recovery of possession, in case the court find that the plaintiff/revision petitioner is not in possession and enjoyment of the suit property. The reason for dismissing the petition cannot be upheld as the introduction of new prayer either on the basis of subsequent event or on the basis of cause of action alleged in the original plaint does not make any difference having regard to the nature of amendment sought for.

8. The suit was filed in the year 2010. The amendment application was filed before the commencement of trial. Hence, no prejudice is likely to be caused to the respondent if the amendment is allowed. However, this amendment can be allowed without prejudice to the contentions of the respondent that the encroachment or construction made by them in the suit property is made long prior to



the suit and subject to the liberty to file an additional written statement. Accordingly, the order passed by the trial court in I.A.No.624 of 2011 in O.S.No.131 of 2010 is set aside and the application in I.A.No.624 of 2011 stands allowed.

9. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected M.P.(MD) No. 1 of 2013 is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The District Munsif,
Pattukottai.

+1cc to M/S.V.Chandrasekar, Advocate SR.No. 71892

C.R.P(PD) (MD)No.1015 of 2013
and M.P(MD) No. 1 of 2013
09.07.2018

cm

JM/RP/SAR 4/24.07.2018/3P/3C