



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

C.R.P(PD) (MD).No.1963 of 2013 and

M.P.(MD)No.1 of 2013

WEB COPY

1.Pandiammal

2.Vedhamani

3.Johnpal

.. Petitioners/Respondents/Defendants

Vs.

1.Meenakshi Ammal

2.Boomi

.. Respondents/Petitioners/Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 16.09.2013 passed in I.A.No.240 of 2013 in O.S.No.28 of 2009 by the learned District Munsif-cum-Judicial Magistrate, Kamuthi.

For Petitioners : Mr.G.Gomathi Sankar

For Respondents : No Appearance

ORDER

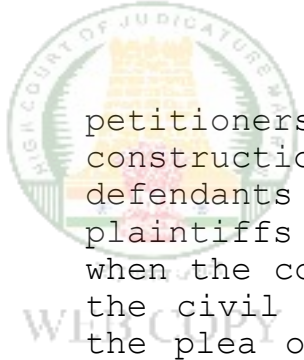
This Civil Revision Petition has been filed by the defendants in the suit in O.S.No.28 of 2009 on the file of District Munsif-cum-Judicial Magistrate, Kamuthi, against the order passed by the District Munsif-cum-Judicial Magistrate, Kamuthi in I.A.No.240 of 2013 in O.S.No.28 of 2009.

2.The respondents in this civil revision petition has filed a suit in O.S.No.28 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Kamuthi, for declaration of title and consequential injunction restraining the revision petitioners/defendants from interfering with their possession by encroaching into the suit property. The suit property is a vacant land and building.

3.During the pendency of the suit, the plaintiffs filed an Interlocutory Application in I.A.No.240 of 2013 in O.S.No.28 of 2009 for amendment of plaint. The amendment of plaint was for introducing a new relief of mandatory injunction and recovery of possession. In the affidavit filed in support of the petition for amendment, the plaintiffs have stated that about four months prior to the filing of the application, the defendants have encroached into a portion of the suit property by putting up construction. It is, therefore stated in the affidavit that the plaintiffs should be permitted to amend the plaint to include the prayer for mandatory injunction and recovery of possession.

<https://hcservices.ecourts.gov.in/hcservices/>

4.This petition for amendment was opposed by the revision



petitioners/defendants on the ground that the defendants had put up construction prior to the filing of the suit. Further, the defendants stated that the alleged encroachment pleaded by the plaintiffs is lawful and that the plaintiffs had never objected, when the construction was put up by the defendants, before filing of the civil suit. The trial court allowed the application accepting the plea on the ground that the objections raised by the revision petitioners/defendants can be considered at the time of trial.

5. Going by the case of the plaintiffs in the suit, the plaintiffs are entitled to seek additional prayer on the basis of subsequent event. It is the specific case of the plaintiff that the defendants have encroached some portion by putting up some construction in respect of the portion of the suit property after suit. The proper remedy for the plaintiffs is to seek prayer for amendment by adding appropriate relief in the suit. The facts and submissions of the revision petitioners can be considered at the stage of trial. Hence, the plaintiffs should be permitted to amend the plaint. However, the plaintiff should prove his contentions on merits. Hence, the petition for amendment has rightly been allowed by the lower Court and this Court finds no merit in the civil revision petition.

6. Accordingly, this civil revision petition is dismissed. However, liberty is given to the revision petitioners, to file additional written statement raising all his case in defence including the plea of limitation and it is open to the revision petitioner to establish his case by producing adequate evidence. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To
The District Munsif-cum-Judicial Magistrate,
Kamuthi.

Copy to
The Section Officer,
E.R/V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1CC to Mr.G.Gomathi Sankar, Advocate in SR.No.69077.

TM

DS/RSK-SKN/SAR- 1:04.07.2018: 2P/5C