



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P.(PD)(MD)No.1964 of 2013

and

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

K.Mokkaiyan :Petitioner /Respondent/Defendant

vs.

1.A.Lakshmanan

2.Valli

3.Selvaraj : Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 04.06.2013 made in I.A.No.256 of 2012 in O.S.No.159 of 2007 on the file of the District Munsif, Aruppukottai.

For Petitioner : Mr.S.Parthasarathy
For R-1to R-3 : Mr.S.Natarajan

ORDER

This Civil Revision Petition is filed against the Fair and Decreetal order dated 04.06.2013 made in I.A.No.256 of 2012 in O.S.No.159 of 2007 on the file of the District Munsif, Aruppukottai.

2.The brief facts that are necessary for the disposal of this civil revision petition are as follows:

The respondents herein filed a suit in O.S.No.159 of 2007 for the reliefs of declaration of title and consequential permanent injunction. This suit is also for mandatory injunction to remove the coconut saplings of the defendant in the suit property. The suit was contested by the defendant by filing a written statement. After filing the suit in the year 2007, the plaintiffs filed an application in I.A.No.256 of 2012, nearly after five years for amending the prayer by introducing the relief of recovery of possession, in case, the Court find that the plaintiffs are not in possession of the suit property. This petition was opposed by the defendant mainly on the ground that the relief of recovery of possession is barred by limitation and if the amendment is allowed, it will introduce a new case on different cause of action and will defeat the rights of the defendant to raise a valid objection regarding the limitation. The interlocutory application for

amendment in I.A.No.256 of 2012 was allowed, as the objection raised by the defendant can also be considered during the trial.

3.This Court find no serious error or irregularity in the order passed by the lower Court permitting to amend the prayer by introducing the relief of recovery of possession by way of alternative relief. The issue whether the relief of recovery of possession is barred by limitation or can be certainly raised as an issue during trial. It is necessary that the revision petitioner should be given an opportunity to file an additional written statement and let in evidence. Since the trial of the suit is not commenced, it is appropriate for the defendant to raise all his objections by way of filing additional written statement and the lower Court shall appropriately frame an issue regarding the same.

4.With these observations, this Civil Revision Petition is dismissed and the order passed by the trial Court in I.A.No.256 of 2012 in O.S.No.159 of 2007 is confirmed. It is made clear that dismissal of the civil revision petition, shall not stand in the way of the defendant in filing an additional written statement and raising a specific issue regarding limitation in respect of the prayer for recovery of possession. It is also made clear that at the time of considering the issue with regard to new prayer for recovery of possession, a plea that the new prayer for recovery of possession shall be considered with effect from the date of petition for amendment, can also be raised by the defendant. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

/True Copy/

Sub Assistant Registrar(CS-III)

To
The District Munsif,
Aruppukottai.

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The Record Keeper,
VR Section,
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+1 CC to Mr.S.PARTHASARATHY, Advocate in SR.No.71114
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CP

RJ/RP/SAR-3/25/07/2018 - 2P/6C

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