

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(PD).No.4938 of 2014

and

M.P.No.1 of 2014

Parthiban
Rep. by
the General Power Agent Ganesan. ... Petitioner

.. Vs ..

Panchamoorthy Ahchiriyar ... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 13.08.2014 passed in I.A.No.508 of 2014 in O.S.No.97 of 2011 on the file of the Principal District Munsif Court, Cheyyar, Tiruvannamalai District.

For Petitioner : Mr.P.Mani

For Respondent : Mr.G.A.Thiyagarajan

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ORDER

The plaintiff in the original suit is the petitioner in the present civil revision petition. The revision petitioner herein has filed the suit in O.S.No.97 of 2011 before the learned Principal District Munsif, Cheyyar, Thiruvannamalai District, seeking for the relief of declaration and for permanent injunction. In the said suit, the respondent herein/defendant has filed written statement stating that on his own title, he is in possession of the property having purchased the same from one of his brother through a valid Sale Deed and there is a mis description of the suit property as stated in paragraph Nos.7 and 8 of the written statement and trying to take advantage of the situation. When P.W.1 was in the witness box, the plaintiff has filed an interlocutory application in I.A.No.244 of 2014 seeking permission to withdraw the suit with liberty to file a fresh suit for the same cause of action and the said I.A.No.244 of 2014 was dismissed by the learned Principal District Munsif, Cheyyar, by an order dated 08.04.2014 observing that it is open to the plaintiff to file necessary amendment petition.

2. It is seen from the typed set of papers filed along with this petition that as against that order dated 08.04.2014 passed in the said I.A.No.244 of 2014, C.R.P.(PD). No.3524 of 2014 was filed by the plaintiff and by an order dated 08.10.2014, this Court dismissed the same giving liberty to the petitioner therein/plaintiff to file appropriate amendment petition as observed by the trial Court.

3. Thereafter, the revision petitioner/plaintiff has filed I.A.No.508 of 2014 for amendment of the pleadings along with a prayer for recovery of possession on the ground that pending suit, the defendant has trespassed into the suit property. The said application was resisted by the respondent herein/defendant stating that the affidavit is bereft of details and as per his written statement, he is in possession of the suit property by virtue of the Sale Deed in his favour and he has not committed any trespass. The said application was dismissed by the learned Principal District Munsif, Cheyyar, on 13.08.2014. As against the dismissal of the said order, the present Civil Revision Petition is preferred by the plaintiff.

4. Heard both sides and perused the records.

5. It is seen from the order passed in C.R.P.(PD) No.3524 of 2014 that the petitioner was given liberty to file appropriate amendment petition. Pursuant to the same, I.A.No.508 of 2014 was filed by the petitioner/plaintiff for amendment. In the said petition, the father of the plaintiff, who was examined as P.W.1, after his examination, has filed an affidavit stating that during the recording of evidence, the defendant has trespassed into the suit property and hence, necessary pleadings have to be incorporated by way of amendment. Consequently, the prayer for recovery of possession is also to be taken note of. The said plea was opposed by the learned counsel for the respondent herein/defendant on the ground that it is bereft of details.

6. After going through the order passed in the above mentioned C.R.P.No.3524 of 2014 and also the affidavit filed in support of the application in I.A.No.508 of 2014, I am of the

considered view that the amendment has to be allowed. However, necessary additional issue as to whether the plea of the plaintiff that pending suit, the defendant has trespassed into the suit property has to be made in the application filed, as the burden of proof lies upon the plaintiff to show that the defendant has trespassed into the suit property pending the suit. Since the impugned order dated 13.08.2014 was passed in the interlocutory application, I am not expressing any opinion, as it is a matter for evidence before the Trial Court.

7. With the above observations, this Civil Revision Petition is allowed. The order passed by the learned Principal District Munsif, Cheyyar, Tiruvannamalai District, in I.A.No.508 of 2014 in O.S.No.97 of 2011 is set aside. I.A.No.508 of 2014 filed for amending the plaint is allowed. The Trial Court is directed to frame necessary issues as to the plea raised by the plaintiff and decide the suit in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

11.12.2019

Internet : Yes

Index : Yes/No
Jrl

RMT.TEEKAA RAMAN., J.

Jrl

To

The Principal District Munsif,
Cheyyar, Tiruvannamalai District.



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