

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.5052 of 2014

and

M.P.No.1 of 2014

S.Jaiganesh

... Petitioner

Vs.

1.Kandasamy

2.Mayilu

3.Vaithilingam

4.Chinnaponnu

5.Chitrarasu

6.Chandrasekaran

7.Rajendran

8.Ramachandran

9.Maruthamuthu

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decree made in I.A.No.92 of 2014 in O.S.No.115 of 2012 on the file of the District Munsif, Attur, dated 08.09.2014.

For Petitioner : Mr.T.Chellapandian

For Respondents : Mr.Zeenath Begum

ORDER

The present Civil Revision Petition has been filed against fair and decretal order dated 08.09.2014 in I.A.No.92 of 2014 in O.S.No. 115 of 2012 on the file of the District Munsif Court, Attur.

2.By the impugned order, the court below has dismissed the application filed under Order 14 Rule 5(1) of CPC by the petitioner seeking to frame additional issues.

3.The petitioner who is the defendant in the suit filed the above application to raise the three additional issues. As per the petition, the following three additional issues also are to be added:-

1. Whether the defendant has perfected his title over item No.1 of the suit property by adverse possession?
2. Whether the suit is bad for suppering of material fact particularly about Vani vaikkal?
3. Whether the plaintiffs have proved to existence of (Vani Vaikkal) drainage chennel at the time of filing

of the suit?

4.The above additional issues have been filed in view of averments in paragraph 4 of the written statement filed by the petitioner/defendant.

5.The Court below has dismissed the application on the ground that the application to frame additional issues cannot be entertained without paying court fee as the defendant is claiming adverse possession. The Court has further observed the first petitioner has to prove valid title possession over the suit property.

6.Heard, the learned counsel for the petitioner and respondents and perused the records.

7.The adverse possession is a mere defence and does not determine the title. The petition is not required to pay court fee for such defence. Consequently, the court below is directed to frame the following issue.

“Whether the defendant has perfected his title over item No.1 of the suit property by adverse possession?”

C.SARAVANAN.J.,

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8.The Court shall thereafter complete the proceedings in the suit within a period of nine months from the date of receipt of a copy of this order.

9.Thus fair and decreetal order in I.A.No.92 of 2014 in O.S.No.115 of 2012 is partially set aside.

10.The Civil Revision Petition stands partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.03.2019

Index : Yes/No
Internet : Yes/No

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To

1.The the District Munsif Court,
Attur.

2.The Section Officer,
V.R.Section, High Court, Madras.

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