



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.07.2019
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P. (PD) (MD) No.1052 of 2019
and
C.M.P (MD) No.5758 of 2019

Subbaiah Thevar

... Petitioner/ Respondent/Defendant

Vs.

Subbulakshmi

... Respondent/Petitioner/Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.1288/17 in O.S.No.231/16 dated 21.01.2019 on the file of the Principal District Munsif Court, Tirunelveli.

For Petitioner : Mr.H.Arumugam

ORDER

This civil revision petition has been filed to set aside the fair and decretal order passed in I.A.No.1288/17 in O.S.No.231/16 dated 21.01.2019 on the file of the Principal District Munsif Court, Tirunelveli.

2.The petitioner is the defendant in O.S.No.231 of 2016 on the file of the Principal District Munsif Court, Tirunelveli. Aggrieved over the order passed in I.A.No.1288 of 2017 in the said suit, the defendant filed this civil revision petition challenging the order passed by the learned Principal District Munsif, Tirunelveli. In earlier, the respondent in this application filed a suit as against this petitioner seeking the relief of declaration, declaring that the plaintiff is the absolute owner of the suit second item of the property and also for the relief of injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the plaintiff over the second item of suit properties. After entering appearance on 24.10.2016, the petitioner/defendant filed his written statement stating that he is in possession of the suit property. After receiving the written statement, when the suit is posted for trial the respondent in this revision petition, filed an application under Order 6 Rules 17, 18 and 151 CPC, seeking to amend the prayer as recovery of possession instead of declaration. The learned Principal District Munsif having considered the said I.A.No.1288 of 2017 in favour of the respondent by saying that for better adjudication, the amendment is necessary in the



suit. Aggrieved over the said findings, the petitioner who is the defendant in the suit, is before this Court.

3.The learned counsel appearing for the petitioner would contend that the respondent has filed the petition before the lower Court after commencement of trial and without due diligence, further, the petition filed by the respondent was allowed without considering the background of the case. Hence, he prayed to set aside the order passed in I.A.No.1288 of 2017.

4.In the affidavit filed by the respondent before the trial Court, it is stated that in the month of December 2016, the petitioner has encroached the suit property and thereby, the prayer for the recovery of possession is necessary. On the other hand, in the written statement filed by the petitioner, he stated that in the month of October 2015 itself, he is in possession of the suit property. So in either way, it is admitted on either side that the petitioner is in possession of the suit schedule property. In the said circumstances, if the relief prayed by the respondent is not granted as requested by him, it is not easy for the trial Judge to find out the real picture. Further, the said situation will create unnecessary complication in the matter. In otherwise, because of the amendment, there was no prejudice caused to the petitioner.

5.Hence, for better adjudication, I am of the considered opinion that the order passed by the learned Principal District Munsif is the well considered one and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal District Munsif Court,
Tirunelveli.

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-74351[F] dated 10/07/2019)

C.R.P. (PD) (MD) No.1052 of 2019
09.07.2019

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