



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 15.11.2019

CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD)(MD)No.983 of 2014

and

M.P.(MD)No.1 of 2014

Meena

.. Petitioner/Petitioner/Plaintiff

Vs.

1.Thayammal

2.Arumugam

.. Respondents/ Respondents/Defendants

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 31.01.2014 passed in I.A.No.982 of 2013 in O.S.No.1 of 2009 on the file of the learned Principal District Munsif, Ambasamuthram, Tirunelveli District.

For Petitioner

: Mr.J.Ashok

For Respondents

: Mr.H.Arumugam

ORDER

Heard the learned counsel appearing on either side.

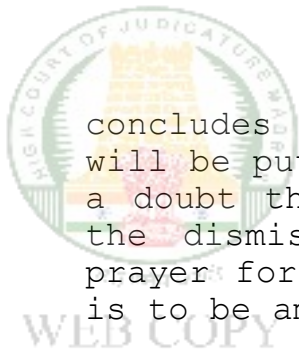
2.This Civil Revision Petition has been filed against the order passed in I.A.No.982 of 2013 in O.S.No.1 of 2009 dated 31.01.2014 on the file of the learned Principal District Munsif, Ambasamuthram.

3.The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit. The petitioner herein has filed a suit in O.S.No.1 of 2009 seeking a prayer of declaration and for injunction. In that suit, the petitioner has filed a application in I.A.No.982 of 2013 for a prayer for amendment. The trial Court dismissed the petition. Against which, the petitioner filed this revision petition.

4.The brief substance of the petition in I.A.No.982 of 2013 is as follows:

The petitioner is not having any document to show possession over the suit second schedule property. If at all the Court

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



concludes that the petitioner failed to pray for possession, she will be put into hardship. The deposition of P.W.2 and P.W.3 creates a doubt that they were yielded by the defendants. Hence, to avoid the dismissal of the suit on technical grounds, an alternative prayer for recovery of possession is to be included and the plaint is to be amended.

5.The brief substance of counter in I.A.No.982 of 2013 is as follows:

The petitioner and her side witness was over on 06.09.2012 itself. Just to wipe out the admissions made out by the witness, the petitioner has filed this petition. The petitioner herself has admitted that she is not in possession and enjoyment of the suit second schedule property. Even in the written statement, the respondents have stated that the petitioner is not in possession of the property and hence, this petition is to be dismissed.

6.On the side of the petitioner, it is stated that no new cause of action is created by the amendment and the amendment is only based upon the evidence of P.W.2 and P.W.3 and that the amendment will not change the character of the case and that the petitioner is having reasonable doubt as to the credentiality of the witness P.W.2 and P.W.3. To avoid the case to be dismissed on technical grounds, the petitioner sought for the amendment.

7.On the side of the respondents, it is stated that in the written statement, the possession of the plaintiff for the suit second schedule property is disputed. After the trial, only to overcome the defence, the plaintiff sought for the amendment and there is no ground to allow the revision petition.

8.The learned counsel for the respondents would rely upon the judgment passed by this Court in the case of **Mariammal and other v. Subramanain** in **C.R.P. (MD)No.1973 of 2011**, wherein this Court has allowed the revision petition filed by the defendants, against the allowing of the amendment petition.

9.A perusal of the records reveals that originally the suit was filed by the plaintiff for a prayer of declaration and for injunction. It is seen that the case was filed only for the prayer of declaration and for injunction and the amendment sought for now is for recovery of possession. These two prayers are contradictory to each other. Whether the plaintiff is in possession or not is to be clearly stated in the plaint. Allowing the amendment will change the entire character of the suit.

10.In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the trial Court. This Civil Revision Petition is dismissed and the order passed in I.A.No.982 of 2013 in O.S.No.1 of 2009 dated 31.01.2014 on the file



C.R.P.(PD)(MD)No.943 of 2014

of the learned Principal District Munsif, Ambasamuthram is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Mrn

To

The Principal District Munsif, Ambasamuthram
Tirunelveli District.

+1cc to Mr.H.Arumugam, Advocate Sr.No.99067

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