



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P(MD)No.1785 of 2019

and

C.M.P. (MD)No.9214 of 2019

Selvam

...Petitioner / Petitioner /
Plaintiff

Vs.

1.Pushpam
2.Malarmani

... Respondents / Respondents /
Defendants

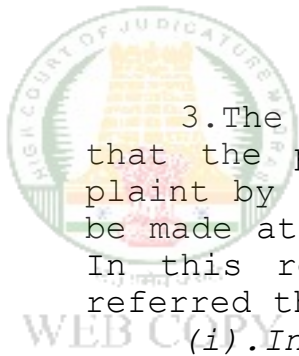
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the order dated 19.08.2019 made in I.A.No.81 of 2019 in O.S.No.63 of 2008 on the file of the District Munsif cum Judicial Magistrate Court, Natham.

For Petitioner : Mr.C.Vakeeswaran
For Respondents : Mr.P.Vairava Sundaram

O R D E R

This Civil Revision Petition has been filed against the order of dismissal dated 19.08.2019 passed in I.A.No.81 of 2019 in O.S.No.63 of 2008 by the learned District Munsif cum Judicial Magistrate Court, Natham. The said application was filed for the purpose of amending the prayer.

2.The Court below after hearing both the parties, dismissed the application holding that the petitioner in the above I.A.No.81 of 2019 in O.S.No.63 of 2008 is not in the possession of the property. Further, the petitioner has admitted the fact that all the revenue documents are with the respondents / defendants. Even at the time of filing the suit for permanent injunction, the revision petitioner / plaintiff was well aware of the fact that the title is in dispute. When such being the case, the petitioner has not asked for the prayer of declaration. The suit was filed in the year 2008 for the purpose of permanent injunction, based on the sale deed said to have been registered on 03.11.2006. Even on the date of 03.11.2006, the respondents herein are in the possession of the property. The vendor Sundari was not in the possession of the property.

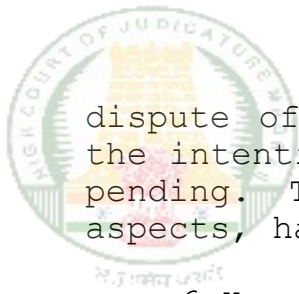


3.The learned counsel for the revision petitioner would contend that the present amendment petition has been filed to amend the plaint by amending the prayer for declaration and the amendment can be made at any point of time, even after the commencement of trial. In this regard, the learned counsel for the revision petitioner referred the following Judgments:-

- (i).In *Sampath Kumar v. Ayyakannu* (2002 (7) SCC 559);
- (ii).In *Hi-Sheet Industries v. Litelon Limited* (2006 (5) CTC 609);
- (iii).In *J.R.Arun Kumar v. K.Boopalan* (2012 (3) MWN (Civil) 749); and
- (iv).In *Hemanakumar v. D.Melvinkumar* (2018 (3) T.N.C.J. 884 (MAD) (MB)).

4.By referring the above Judgments, he submitted that there is no impediment for the Court below to allow this application, however, without considering all these aspects, the Court below rejected the application stating that the amendment petition has been filed in the year 2019 that is after a period of eleven years. Further, he would submit that the intention of the petitioner is not to drag on the matter, but to avoid the multiplicity of proceedings. In case, if the said amendment is not allowed, the revision petitioner has no other option except to file a suit for declaration and therefore by amending the plaint, no prejudice would be caused for the respondents / defendants. Hence, he prayed to set aside the order passed by the Court below and to allow this Civil Revision petition.

5.On the other hand, the learned counsel for the respondents / defendants would contend that the vendor (Sundari) of the sale deed dated 03.11.2006, is not at all the daughter of Periakaruppan, but she is the daughter of one Chinnandi. In this regard, the respondents have filed lot of documents in order to prove their case. By virtue of the Will executed by the father (Periakaruppan) of the respondents / defendants, dated 29.01.2006, which was registered on 03.04.2006, the said Will has come into effect since 06.11.2006 that is the date of the death of the Author of the Will. Therefore, the execution of the sale deed by the Vendor (Sundari), is without having any right over the property. Further, the said Sundari, is not the daughter of Periakaruppan. on the other hand, she is the daughter of Chinnandi. Hence, she has no right over the property and she never had the possession of the property also. So, in the present case, at the time of filing the suit itself, the revision petitioner / plaintiff was well aware of the fact that the respondents / defendants are in the possession of the property, even when the revision petitioner made an attempt to trespass into the property on 30.11.2006, he was denied the entry by the respondents / defendants. In these circumstances, the present suit has been filed in the year 2008 and he never ask for any prayer, after a period of expiry of more than 13 years from the date of knowledge of the



dispute of title, now he filed the application for amendment with the intention only to drag on the matter, when the matter is already pending. Therefore, the Court below, after considering all the aspects, has rightly dismissed the petition for amendment.

6. Heard the learned counsel appearing on either side and perused the records.

7. The suit scheduled property originally belonged to the grand father of the respondents / defendants and thereafter, it was come to the author of the Will, the father of the respondents viz., Periakaruppan. Thereafter, the respondents' father executed a registered Will to the extent that after his demise, the properties will go to his son and daughter, who are the legal heirs, in the manner stated in the Will. The respondents are the only legal heirs of the deceased. Therefore, after his death, the respondents / defendants are entitled for the suit scheduled property. When that being the case, the said Sundari claims that she is the legal heir of Periakaruppan without producing any document. Admittedly, the said Sundari is the daughter of Chinnandi. The revision petitioner has disturbed the possession of the respondents and in this regard a complaint also lodged before the Natham Police Station on 30.11.2006. When the revision petitioner / plaintiff had knowledge about the dispute in the title in the year of 2006 and the suit was filed in 2008, he has not prayed for any relief for declaration and he ask only for permanent injunction, that too, he himself admitted that the possession was with the respondents / defendants and all the revenue records also with the respondents.

8. When that being case, only on the basis of the sale deed, the revision petitioner / plaintiff has filed the suit for permanent injunction. Admittedly, the revision petitioner is not in possession of the property. If at all he is entitled for the possession of the property, the Court below will look into the aspect of the entitlement of the revision petitioner, while disposing of the suit and of course, the Court has to look into the aspect of who is the owner and since the possession is not with the revision petitioner, it is not case that the revision petitioner / plaintiff was removed deliberately by the respondents / defendants and that the case has been filed for possession of the property under the Specific Performance Act. But this is the case on the basis of title over the property and asking for permanent injunction and therefore, this Court is of the view that even assuming that the amendment petition is not allowed, the Court has to decide who is the owner of the property and thereafter, will pass order for permanent injunction. Therefore, the present application for amendment of the prayer for declaration is not necessary, due to the reason while considering the prayer for permanent injunction, the Court below necessarily look into the aspect of title and without any finality on the title, the Court below cannot dispose of the suit for permanent injunction.

<https://hccasescourts.gov.in/hccases/crpe> Court below, after considering all these aspects



including the fact that after 13 years from the date of knowledge of dispute of title of the property, the plaintiff has filed the amendment petition, has rightly rejected the application, which does not require any interference at the hands of this court.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif cum
Judicial Magistrate, Natham.

+1 CC to M/s.C. VAKEESWARAN, Advocate (SR-102615[F] 29/11/2019)

**Order made in
C.R.P(MD)No.1785 of 2019
29.11.2019**

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SDS (12.12.2019) 4P 3C