



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2019

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P(MD)No.386 of 2011 (PD)

and

M.P. (MD) .No.1 of 2011

1.Gnanamuthu

2.Ganesan

3.Paranthaman

4.Lakshmi

5.Babu

6.Prabhu

7.Prema

.. Petitioners / Petitioners
Plaintiffs

Vs.

Mookaiah

.. Respondent/ Respondent
Defendant

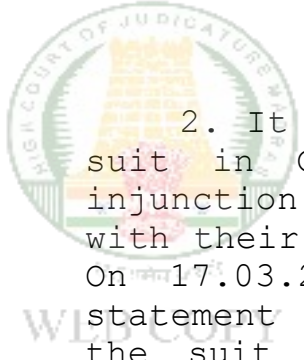
PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 30.09.2010, passed in I.A.No.367 of 2010 in O.S.No.247 of 2008 by the District Munsif, Theni.

For petitioners : Mr.V.Meenakshisundaram
for Mr.A.Thirumurthy

For respondent : Mr.C.Ramesh

ORDER

This petition has been filed by the petitioners/plaintiffs as against the order, dated 30.09.2010, passed in I.A.No.367 of 2010 in O.S.No.247 of 2008, whereby and whereunder the Court below dismissed the petition filed by the petitioners seeking to amend the plaint by adding the relief of declaration.



2. It is seen that the petitioners / plaintiffs had filed the suit in O.S.No.247 of 2008 seeking the relief of permanent injunction restraining the respondent/defendant from interfering with their peaceful possession and enjoyment of the suit property. On 17.03.2009, the respondent / defendant filed his written statement denying the title and possession of the plaintiffs in the suit property. On 26.09.2010, the petitioners/plaintiffs filed I.A.No.367 of 2010 seeking to add the relief of declaration by way of amendment. The Court below dismissed the amendment petition holding that the petitioners have filed the said petition after the commencement of trial. Aggrieved by that order, the petitioners have filed this Civil Revision Petition.

3. Heard the learned counsel appearing for both sides and perused the records carefully.

4. In this case, the petitioners/plaintiffs filed the suit in O.S.No.247 of 2008 seeking the relief of permanent injunction restraining the respondent/defendant from interfering with their peaceful possession and enjoyment of the suit property. But, the respondent/defendant filed his written statement denying the title and possession of the petitioners/plaintiffs. Since the respondent/defendant denied the title of the petitioners/plaintiffs and he created a cloud in the title of the petitioners/plaintiffs, the petitioners/plaintiffs filed I.A.No.367 of 2010 seeking to add the relief of declaration in the plaint by way of amendment. The Hon'ble Supreme Court in the decision in **Anathula Sudhakar Vs. P.Buchi Reddy (dead) rep. by LRs and others**, reported in **2009(2) L.W. 546** has categorically held that when the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction.

5. It is seen that the Court below has dismissed the amendment petition holding that they have filed this amendment petitioner belatedly after the commencement of trial. But, as per the decision of the Hon'ble Supreme Court in **L.C.Hanumanthappa Vs. H.B.Shivakumar**, reported in **2015(6) CTC 562**, such amendment can be sought for within three years from the date of filing of such written statement. In this case, the respondent/defendant filed the written statement denying the title of the petitioners/plaintiffs only on 17.03.2009, which would clearly show that the amendment petition filed by the petitioners/plaintiffs is well within the time of limitation. More over, by allowing the amendment petition, the real questions in controversy between the parties will be decided and <https://hreservices.hreservices.gov.in/hreservices/> proceedings could be avoided. The Court below, without considering the above aspects, has erroneously dismissed



the amendment petition. In view of the above, this Court is inclined to set aside the impugned order and to allow the amendment petition filed by the petitioners/plaintiffs before the Court below.

6. In the result, this Civil Revision Petition is allowed and the impugned order passed by the Court below is set aside and the amendment petition filed by the petitioners/plaintiffs is allowed. The Court below is directed to amend the plaint after collecting necessary Court fee, if any. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (WRIT)

// True Copy //

Sub Assistant Registrar (CS)

To

The District Munsif,
Theni.

+1 CC to MR.D.NALLATHAMBI, Advocate (SR-61645[F] dated 22/04/2019)

C.R.P (MD) No.386 of 2011 (PD)
16.04.2019

gcg

AE/ (13.05.2019) 3P 3C