

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).Nos.1326 & 1327 of 2015
and
M.P.No.1 of 2015

Dhayaraman Petitioner in both CRPs.

Vs.

1.K.Anbazhagan
2.Duraisamy
3.Venkatesan
4.Murugesan
5.E.Rajendran
6.Thulasi
7.Lingam
8.Devan
9.Kanniappan

... Respondents in both CRPs.

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 17.02.2014 passed by the learned District Munsif Court, Madurantakam, dismissing I.A.Nos.1604 and 1605 of 2012 respectively, in I.A.No.1362 of 2012 in O.S.No.253 of 2012 and allow the above I.A.Nos.1604 and 1605 of 2012 respectively, by allowing these Civil Revision Petitions.

For Petitioner in
both CRPs. : Mr.N.Nagu Sah

For Respondents in
both CRPs. : No Appearance

COMMON ORDER

CRP.No.1326 of 2015 has been filed by the petitioner/plaintiff against the dismissal of his application in I.A.No.1604 of 2012 in I.A.No.1362 of 2012 in O.S.No.253 of 2012 on the file of the District Munsif, Madurantakkam, dated 17.02.2014.

2. CRP.No.1327 of 2015 has been filed by the petitioner/plaintiff against the dismissal of his application in I.A.No.1605 in O.S.No.253 of 2012 on the file of the District Munsif, Madurantakkam, dated 17.02.2014.

3. The petitioner herein in both the Civil Revision Petitions had filed a suit in O.S.No.253 of 2012 on the file of the District Munsif, Madurantakkam, for the relief of permanent injunction to restrain the respondents/defendants from interfering with his peaceful possession and

enjoyment of the properties situated in S.No.138/7A ad-measuring 1650 sq.mts. and S.No.138/7C ad-measuring 2250 sq.mts., of Bhukkathurai Village, Madurantakkam Taluk. He also filed an application in I.A.No.1362 of 2012 seeking interim injunction. Subsequently, he filed an application in I.A.No.1604 of 2012 in I.A.No.1362 of 2012 to add two more properties, which are situated in S.No.138/7B ad-measuring 1200 sq.mts, S.No.138/7D ad-measuring 1050 sq.mts and S.No.138/3A ad-measuring 750 sq.mts of the aforesaid Village. He filed a similar petition to amend the plaint viz., I.A.No.1605 of 2012. The learned District Munsif, by the separate orders dated 17.02.2014 had dismissed both the petitions. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petitions.

4. Though notice was served on the respondents and their names also printed in the cause-list, they have not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner/plaintiff and perusing the materials filed along with these Civil Revision Petitions, order is being passed in these petitions.

5. The learned counsel for the petitioner has submitted that at the time of filing the suit, the petitioner inadvertently omitted mention the properties which are situated in S.Nos.138/7B, 138/7D and 138/3A and hence, the petitioner has filed the applications in I.A.Nos.1604 and 1605 of 2012 to amend the interim injunction petition and the plaint respectively, but, the learned District Munsif, has dismissed the said applications by saying that the petitioner has not produced any materials to show that he is having right over the said property and also he is in possession. He further submitted that at the stage of considering the application for amendment, the Court should not have ventured into the issue whether the plaintiff has got title or possession over the said properties and that the said issue has to be decided in the main suit only. Therefore, he prayed to allow the present Civil Revision Petitions and set aside the orders passed by the learned District Munsif and allow the I.A.Nos.1604 and 1605 of 2012.

6. In the affidavit filed in support of I.A.Nos.1604 and 1605 of 2012, the petitioner has categorically stated that he is in possession and enjoyment of the properties situated in S.No.138/7B ad-measuring

1200 sq.mts, S.No.138/7D ad-measuring 1050 sq.mts and S.No.138/3A ad-measuring 750 sq.mts, but inadvertently, he failed to mention the said properties along with the suit properties in the injunction petition and also in the plaint and hence, it has become necessary to add the said properties in the injunction petition and also in the plaint. The trial Court instead of considering the said explanation, it has gone into the merits of the case, as to whether the petitioner got any title or he is in possession of the suit properties. As rightly pointed out by the learned counsel for the petitioner the said issue has to be decided in the suit and not at this stage. Hence, this Court is inclined to allow the Civil Revision Petitions.

7. In the result, the Civil Revision Petitions are allowed. The orders passed by the learned District Munsif in I.A.Nos.1604 and 1605 of 2012 dated 17.02.2014 are set aside. Consequently, the I.A.Nos.1604 and 1605 of 2012 are allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

16.10.2020

Internet : Yes/No
dna

CRP (PD).Nos.1326 & 1327 of 2015

P.RAJAMANICKAM.J.,
dna

To

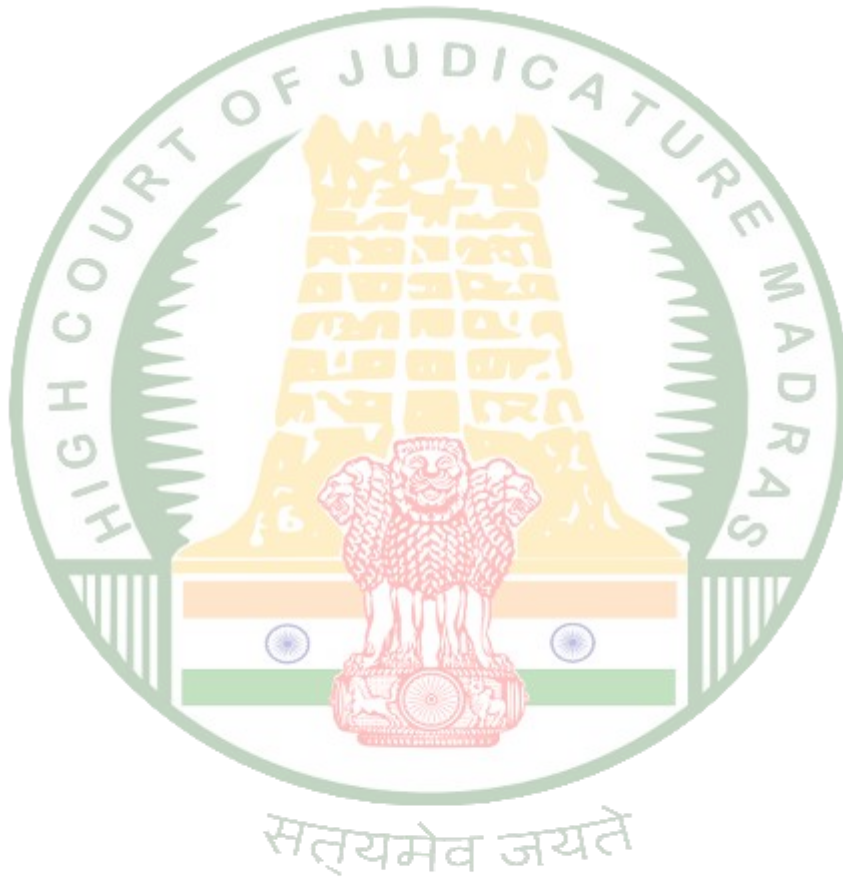
The District Munsif Court, Madurantakkam,
Kancheepuram District.



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