



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 12.03.2020

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P(MD) No.143 of 2020
and C.M.P(MD)No.795 of 2020

1.Gurusamy
2.Poomani

... Petitioners/Petitioners/Plaintiffs

Vs.

1.Muppudathi
2.B.Selvi
3.Murugeshwaran @ Mohan
4.Sudha
5.Davidraja
6.Arockia Mary

... Respondents/Respondents/Defendants

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order dated 02.03.2019 passed in I.A.No.331 of 2018 in O.S.No.82 of 2015 on the file of Additional Subordinate Court, Tenkasi.

For Petitioners : Mr.R.J.Karthick

For R1 & R2 : Mr.J.Selvan

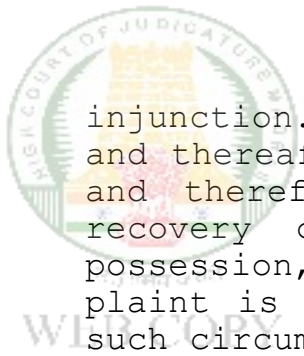
For R3,R4 & R6 : No appearance

O R D E R

This Civil Revision Petition has been filed against the fair and decretal order dated 02.03.2019 passed in I.A.No.331 of 2018 in O.S.No.82 of 2015 on the file of Additional Subordinate Court, Tenkasi.

2. The petitioners have filed the suit in O.S.No.82 of 2015 on the file of the Additional Subordinate Court, Tenkasi. During the pendency of the suit, they filed an application to amend the plaint and that petition was dismissed. Challenging the said order passed in the Interlocutory Application in I.A.No.331 of 2018, the petitioners are before this Court.

3. The learned counsel appearing for the petitioners would submit that since at the time of filing the suit the petitioners were in possession, they have filed the suit for declaration and



injunction. During the pendency of the suit, the defendants 1 and 2 and thereafter, the defendants 3 and 4 have encroached the property and therefore they filed the petition to amend the plaint for recovery of portion of the property and since they are in possession, necessarily the plaint has to be amended and unless the plaint is amended, they will not get declarative decree and under such circumstances, they filed the petition to amend the plaint. The trial court ought not to have dismissed the said petition. The learned counsel for the petitioners prays for setting aside the order of the trial court.

4. The learned counsel for the respondents 1 and 2 would submit that the petitioners/plaintiffs have suppressed the fact that they have got title from the settlement deed and the defendants got title from a Will and the petitioners have not come to the court with clean hands.

5. Heard both sides and perused the records.

6. On a perusal of records, it is seen that the petitioners have filed the suit in O.S. No.82 of 2016 and the same is pending. During the pendency of the suit, the petitioners filed an application in I.A.No.331 of 2018 to amend the plaint. The trial court dismissed the petition purely on the ground that the plea taken by the plaintiffs is materially contradictory with each other and therefore, that plea cannot be accepted and if amendment sought for by the petitioners is allowed prejudice would be caused to the respondents.

7. It is seen that both parties are relatives and also the plaintiffs have got title from the settlement deed and the defendants got title from the Will. If settlement deed is true, the plaintiffs will be entitled to the suit property and if the Will is true the defendants will be entitled to the suit property. Who are in possession, who is the original owner and who is the encroacher of the petition mentioned property.. all these issues have to be decided in the suit not in this application. However the application to amend the plaint was filed at pre-trial stage and therefore, this Court is inclined to allow the application. But it is seen the application itself is not properly worded and even if the application is allowed it will lead to further amendment. In such circumstances, this Court is inclined to dismiss this Civil Revision Petition granting liberty to the petitioners to file a fresh petition with better affidavit and give correct particulars regarding amendment. In case a fresh application to amend the plaint is filed by the petitioners, the trial court is directed to decide the same after giving an opportunity to the respondents in accordance with law within a period of one month from the date of filing of fresh application.



WEB COPY

C.R.P(MD) No.143 of 2020

8. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM

To

The Additional Subordinate Court,
Tenkasi.

+1 CC to Mr.R.J.KARTHICK, Advocate (SR-11524[F] dated 13/03/2020)

+1 CC to Mr.T.SELVAN, Advocate (SR-11652[F] dated 13/03/2020)

C.R.P(MD) No.143 of 2020
and C.M.P(MD) No.795 of 2020
12.03.2020

MK (13.05.2020) 3P 4C