



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.1953 of 2015

and

M.P. (MD)No.1 of 2015

S.Prabhakaran

: Petitioner/Plaintiff

.. Vs ..

1.D.Ayyammal

2.D.Pandi

3.D.Sivakumar

4.P.Veeraiya Perumal

: Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the ex order and fair order, dated 04.07.2015 made in I.A.No.411 of 2014 in O.S.No.141 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Vadipatti.

For Petitioner : Mr.R.Suriyanarayanan

For R1 to R3 : Mr.R.Lakshmanan

For R4 : No Appearance

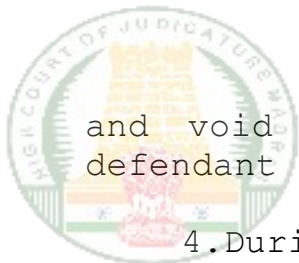
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ORDER

This Civil Revision petition is directed against the order passed by the learned District Munsif-cum-Judicial Magistrate, Vadipatti, in I.A.No.411 of 2014 in O.S.No.141 of 2009, dated 04.07.2015.

2.Brief facts that are necessary for the disposal of this revision petition are as follows:

3.The revision petitioner is the plaintiff in the suit in O.S.No.141 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Vadipatti. The suit is for a declaration that the settlement deed executed by the first defendant in favour of defendants 2 to 3 in respect of suit property on 09.06.2007 is null and void and for consequential injunction restraining the defendants 2 and 3 from alienating the suit property. The second declaration sought for by the revision petitioner is that the Court should declare that the mortgage deed executed by the first defendant in favour of defendants 2 and 3 in favour of 4th defendant on 30.01.2002 as null and void.



and void and for consequential injunction restraining the 4th defendant from alienating the suit property further.

4. During the pendency of the suit, the plaintiff/revision petitioner filed an application in I.A.No.411 of 2014 in O.S.No.141 of 2009 to amend the prayer in the suit, that is to include a prayer to direct the defendants to hand over possession of the suit property after removing the temporary construction put up by the defendants in the suit property. It is also admitted before this Court that the defendants 2 and 3 in the suit have also filed another suit in O.S.No.121 of 2011 for declaration of title in respect of same property and that the said suit was also pending from 2011. It was only after the period of three years, the amendment application was filed by the revision petitioner. However, it is stated in the affidavit filed in support of the petition, that the defendants have encroached the suit property by putting up tin sheet and let out the temporary structure to a tenant after the suit.

5. The defendants have contested the suit application by stating that they are in possession of the suit property long back and that the revenue authorities have also concluded that the defendants alone are entitled to get patta for the suit property. However, the trial Court dismissed the application mainly on the ground that the petitioner has not sought for any declarative relief claiming title to the property and that therefore, the prayer for amendment seeking a further relief of recovery of possession cannot be permitted. Since the application for amendment was filed after the suit filed by the defendants for declaration of their title, the trial Court further observed that the amendment petition is belated and liable to be dismissed for want of *bona fides*. Aggrieved by the same, the above revision petition is filed.

6. This Court is of the view that the trial Court is right in dismissing the petition for amendment to introduce a new prayer for recovery of possession, without there being a relief for declaration of his title. It is to be noted that the suit for declaration of title filed by the defendants 2 and 3 is pending in O.S.No.121 of 2011 on the file of the District Munsif-cum-Judicial Magistrate Court, Vadipatti. Hence, the revision petitioner is expected to amend his prayer in the suit, as one for declaration of title in order to maintain the consequential relief of recovery of possession. When the title is in issue and the revenue officials have finally concluded that the defendants 2 and 3 are entitled to patta for the suit property, the declarative relief is mandatory and the revision petitioner can get consequential relief, only if he establishes his title, as contemplated under Section 14 of Tamil Nadu Patta Pass Book Act 1983. Without the



prayer for declaration of title, the consequential relief for recovery of possession cannot be granted by the trial Court.

7.Hence, it is appropriate for the revision petitioner to file a petition for amendment introducing the prayer for declaration of his title and for other consequential relief for possession. When such an application is filed, that has to be considered on merits. The order of trial Court dismissing the petition for amendment cannot be faulted when the plaintiff seeks the relief for recovery of possession without seeking a declaration.

8.Hence, this Civil Revision petition is dismissed and the order passed by the learned District Munsif-cum-Judicial Magistrate, Vadipatti, in I.A.No.411 of 2014 in O.S.No.141 of 2009, dated 04.07.2015, is confirmed. Liberty is given to the petitioner to file a petition for amendment seeking a prayer for declaration of title and for consequential injunction of recovery of possession. When such an application is filed by the revision petitioner, the same will be decided in accordance with law uninfluenced by any of the observations of this Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

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Sub Assistant Registrar(CS)

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To

1.The District Munsif-cum-Judicial Magistrate, Vadipatti.

2.The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R. SURIYANARAYANAN, Advocate (SR-15763[F] dated 03/09/2020)

C.R.P. (PD) (MD)No.1953 of 2015

01.09.2020

KG (CO)

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