

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)No.3964 of 2015
and M.P.No.1 of 2015

1. Andal Ammal
2. Alamelu Ammal

... Petitioners

Vs.

1. Bhuvaneswari
2. Radhakrishnan (died)
3. Ilayaperumal
4. Gurumurthy
5. Arul
6. Vikraman
7. Perumal
8. Saroja

(R4 recorded as LR of the deceased R2
and R7 & R8 brought on record as
LRs of the deceased R2 vide Court
Order dated 22.01.2021 made in
CMP.Nos.13711 & 13712 of 2020
in C.R.P.No.3964 of 2015)

... Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 16.07.2015 made in I.A.No.69 of 2013 in A.S.No.86 of 2009 on the file of the Principal Sub Court, Villupuram and consequently allow the said I.A.

For Petitioner : Mr.J.Ramakrishnan

For Respondents

For R1, R3 to R8 : Mr.N.Suresh

R2 : Died

ORDER

The Civil Revision Petition is directed as against the fair and decretal order dated 16.07.2015 passed by the learned Principal Sub Court, Villupuram, in I.A.No.69 of 2013 in A.S.No.86 of 2009, thereby dismissing the petitions filed by the petitioner for amendment of plaint.

2. The petitioners are the plaintiffs and they filed suit in O.S.No.39 of 2007, for declaration and injunction in respect of the suit property as against the respondents herein. The said suit was decreed and aggrieved by the same, the respondents filed appeal suit in A.S.No.86 of 2009 on the file of the Principal Subordinate Court, Villupuram. The said appeal was allowed and as against which the petitioner filed second appeal before this Court in S.A.No.22 of 2011, and this Court by the judgment and decree dated 15.06.2011, set aside the order passed in the appeal suit and remitted the matter back to the first appellate Court for fresh disposal. Further both the parties are permitted to adduce evidence, whereupon the

first appellate Court is directed to decide the matter on merits uninfluenced by any of the observations made by this Court, within a period of four months from the date of receipt of records.

3. After remanding the appeal suit, the petitioners filed the present petition to include the prayer of recovery of possession in respect of the suit property on the ground that, while pending the second appeal, on 27.01.2011 the respondents trespassed into the part of the suit property and also put up construction with halo blocks. Therefore, the petitioners also lodged complaint on 27.01.2011 on the file of the Inspector of Police, Thirukovilur Police Station, and they were issued C.S.R.No.65 of 2011. However, the trial Court dismissed the petition for the reason that the petitioner failed to prove that the respondents trespassed in the suit property and put up construction by material evidence.

4. The learned counsel appearing for the respondents relied upon the judgment reported in **2012 5 CTC 37** in the case of **Gnanasoundiran Vs. Gunasekaran** which reads as follows :-

"8. It is to be noted that the petitioner/plaintiff has come forward with the Interlocutory Application seeking for amendment after commencement of trial. Admittedly, the petitioner has not made out a case that in spite of his due diligence, he could not have filed the Amendment Application before commencement of trial. It is to be noted that the petitioner/plaintiff has categorically stated in para 3 of the Plaint that after the death of Rasi Kandiyar on 4.1.2003, the so-called will had come into effect and she had taken the suit property in her possession and enjoying the same. Therefore, when the suit property was claimed to be in possession of the petitioner, she could not seek for amendment of the plaint as regards, 'recovery of possession' which as rightly held by the Trial Court that it would certainly cause prejudice to the respondent/defendant. However, it is now well settled that no amendment can be allowed after commencement of trial. In recent decision J. Samuel & other Vs. Gattu Mahesh & Others, reported in 2012 (2) SCC 300, after enunciating all relevant decisions in the field and held in para

23 as under:

"23. Though the counsel for the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order VI Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delays in filing the applications."

This Court held that even in the plaint there are averments that the suit property is in possession of the defendant, the plaintiff would have sought for recovery of possession at the time of filing suit itself.

5. Whereas in the case on hand, the petitioner initially filed suit for declaration and permanent injunction in respect of the suit property.

While the second appeal was pending before this Court, on 27.01.2011, the respondents trespassed into the suit property and also put up constructions. In fact, the petitioners lodged complaint and they were issued C.S.R.No. 65 of 2011 on the file of the Inspector of Police, Thirukovilur Police Station. Therefore, the above cited case is not applicable to the case on hand.

6. That apart the amendment sought for in this petition is to include the prayer of recovery of possession as well as the mandatory injunction to remove the construction put up by the respondents herein along with the original prayer of declaration. If the petition is allowed, it would not cause any prejudice to the respondents and they also permitted to file additional written statement for the amendment made in the plaint. Therefore, the order passed by the Court below is perverse and liable to be set aside.

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7. Accordingly, the order dated 16.07.2015 passed by the learned Principal Sub Court, Villupuram, in I.A.No.69 of 2013 in A.S.No.86 of

2009 is hereby set aside. The trial is directed to permit the petitioners to amend the plaint. It is made clear that the respondents are at liberty to file additional written statement for the amendment made in the plaint.

8. With the above directions, the Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

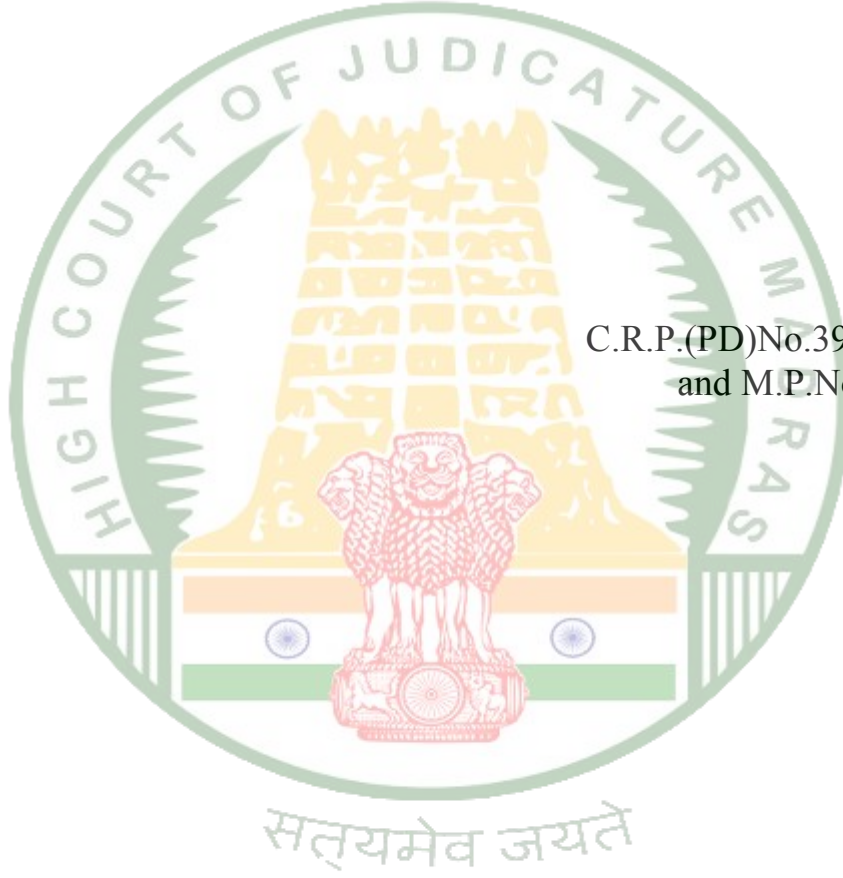
1. The Principal Sub Court,
Villupuram.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

C.R.P.(NPD)No.3964 of 2015

G.K.ILANTHIRAIYAN, J.

rts



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