

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.04.2021**

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD).No.2152 of 2018
and C.M.P.No.13383 of 2018

S.Kuppuraj

... Petitioner

Vs

1.K.Rajkumar

2.K.Janaki

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 12.07.2018 passed in I.A.No.783 of 2018 in O.S.No.2908 of 2016 on the file of the XIV Assistant Judge in City Civil Court at Chennai.

For Petitioner : Mr.R.Manickavel

For Respondents : Mr.G.Balasubramaniam

ORDER

This Civil Revision Petition is filed against the order dated 12.07.2018 passed in I.A.No.783 of 2018 in O.S.No.2908 of 2016 on the file of the XIV Assistant Judge in City Civil Court at Chennai, thereby dismissing the petition for amendment.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for bare injunction in respect of the suit property. The petitioner is the husband and the respondents 1 and 2 are the son and wife of the petitioner. The petitioner filed a suit alleging that the respondents 1 and 2 are trying to driven out the petitioner from the suit property. While pending the suit, the petitioner is being a retired employee was driven out from the suit property. Therefore, the petitioner filed the petition to include the prayer sought for

"The following paragraphs numbered as Para Nos.17, 18 and 19 has to be included in the plaint after the existing paragraph 16 and the plaint paragraphs have to be renumbered accordingly.

17. The plaintiff states that after filing the suit the defendants became more violent and they were further infuriated by the plaintiff's action in filing the suit and they physically threw the plaintiff out of the house and even he was pushed out of the house causing bruised injuries on his leg and hand. The plaintiff also lodged a complaint to the police and also complained the occurrence to the welfare officer in the pending complaint under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act. Actually the plaintiff was thrown out of the house only after filing the suit before that he was only often threatened that he would be thrown out of the house but the defendants executed the same after his filing the suit.

18. The plaintiff further states that in view of the serious threat of dispossession earlier he filed the present suit for bare injunction to protect the plaintiff's lawful possession of the family property though the entire contribution to purchase the property and constructed the house was made by the plaintiff. But the plaintiff has chosen to get the power in the name of the plaintiff's wife, the second defendant out of love and affection. But now both the plaintiff's son and wife have become hostile to the plaintiff and betraying him. Now in view of the changed circumstances and in view of the subsequent development where the plaintiff has been virtually dispossessed and thrown out of the plaintiff's house it has become necessary to amend the plaint suitably.

19. The plaintiff further states that in the above suit, during the course of arguments and while advancing the submission on behalf of the plaintiff his counsel felt that the relief has to be moulded in order to protect the interest of a senior citizen who has been denied his right to live in dignity and peace. It is the mission of welfare society like me to

safeguard the interest of senior citizens and enable them to live in dignity ensuring security free from exploitation and harassment. But the plaintiff's only son and wife are harassing the plaintiff for the sake of grabbing the property making the plaintiff victim of physical and mental abuse of their own children and wife. Here in this case the plaintiff's son as DW1 has gone to the extent of deposing that he will not permit the plaintiff to enter into the house or stay in the house which is his own. The plaintiff is entitled to be in possession of the suit property along with the defendants who are his family members and the defendants do not have any independent right or any exclusive right to be in occupation of the suit property which now belongs to Tamil nadu Slum Clearance Board. The suit property and the adjacent lands belonged to the defense department and subsequently handed over to the Tamil Nadu Slum Clearance Board for an orderly development and the suit property is allotted to the plaintiff's family. Therefore the plaintiff has got every right to be in occupation. The land belongs to the Tamil Nadu Slum Clearance Board is an admitted fact in this suit and DW1 has also admitted the fact in the cross examination.

ii) The existing prayer in the plaint for permanent injunction has to be deleted and the relief for declaration and mandatory injunction has to be substituted in the following manner in the prayer column;

(a) Granting a declaration that the plaintiff is entitled to be in occupation in the house property bearing Door No.38/379, 20th Sarojini Street, G.K.M.Colony, Chennai - 600 082, comprised in T.S.No.3, Block No.32 of Peravallur Village measuring about 1240 Sq.ft., which is more particularly described in the schedule hereunder.

(b) Granting a decree for permanent injunction restraining the defendants not to disturb or prevent the plaintiff remaining in occupation of the suit property.

(iii) In the cause of action column, Para No.17 in the end of the para the following line has to be added.

"Subsequently after filing the suit when the plaintiff was thrown out of the suit property every time he entered into the house and prevented from entering inside".

(iv) The memo of valuation of Court fee also has to be suitably amended as follows by deleting the existing Court fee column at paragraph 18 and the following Para has to be substituted as Para 21 in the plaint.

*a) The relief for declaration is valued at
Rs.1000/- under sec.25(d) of the
Tamilnadu Court Fees and Suit Valuation
Act and the Court fee paid is - Rs.75.50/-*

*b) The relief for permanent injunction is
valued at Rs.1000/- under sec.27(c) of
the Tamilnadu Court Fees and Suit
Valuation Act and the Court fee paid is - Rs.75.50/-*

Total Court fee paid - Rs.151/-"

3. On perusal of the cross examination of P.W.1, he deposed that even before filing the suit, the petitioner himself went out of the suit property. If the petitioner comes again to the suit property, he will not be allowed to enter into the house. Therefore, the amendment sought for by the petitioner can be allowed and no prejudice will be caused to the respondents. The amendment sought for by the petitioner also would not change the nature of the suit.

4. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.783 of 2018 in O.S.No.2908 of 2016 dated 12.07.2018 on the file of XIV Assistant Judge in City Civil Court, Chennai is set aside. Consequently, the connected miscellaneous petition is closed. No order of costs.

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
rna

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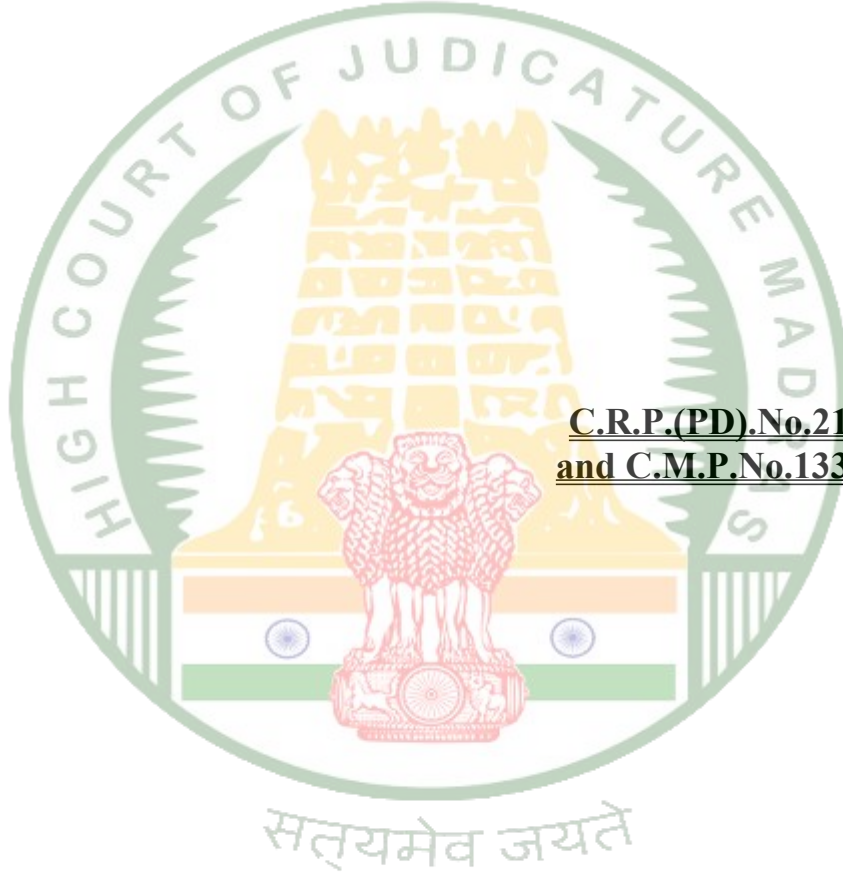
The XIV Assistant Judge,
City Civil Court,
Chennai.



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G.K.ILANTHIRAIYAN. J,

rna



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