

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.3516 of 2016

and

Cmp.No.17858 of 2016

Subramanian

... Petitioner

Versus

Prakash (Died)

1.Saravanan

2.Karunakaran

3.Dhanaraj

4.Sumathi

5.Boominathan

6.Kanagavalli

7.Minor Jayasuriya

8.Minor Jayapriya

9.Minor Jayachandran

... Respondents

[Minor respondents 7 to 9 are represented

by their Guardian and mother Kanagavalli, the 6th respondent]

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 17.06.2016 made in I.A.No.1043 of 2015 in O.S.No.74 of 2009 passed by the learned Principal District Munsif, Tindivanam.

For Petitioners : Mr.S.Haja Mohideen Gisthi

For R1 to R4 : Ms. C.Jaya Chitra

For R5 : Notice served

ORDER

This Civil Revision Petition is directed as against fair and decretal order dated 17.06.2016 made in I.A.No.1043 of 2015 in O.S.No.74 of 2009 passed by the learned Principal District Munsif, Tindivanam, thereby, rejecting the petition for amendment in the plaint prayer to include the prayer of recovery of possession.

2.The Petitioner is the Plaintiff and the Respondents are the defendants. The Petitioner filed the suit for declaration and permanent injunction in respect of the suit property. The suit was filed on 17.02.2009, thereafter, an Advocate Commissioner was appointed. After the advocate commissioner filed his report, the defendants 8-10 filed a written statement on 27.08.2013. In the said written statement, they have specifically stated that they are in possession of the suit property. The report of the Advocate Commissioner also revealed that the suit property was cultivated by the defendants and they are in possession of enjoyment of suit property. The petitioner came to knowledge, after filing the written statement by the defendants, that the defendants are in possession and enjoyment of the suit property.

3.The petitioner being the plaintiff, is not in possession and enjoyment of the suit property. That apart, the suit is filed for declaration and injunction and that the averments of the petitioner in the plaint is that he is very much in possession and enjoyment of the suit property. In view of such averments, the plaintiff cannot seek for the prayer for recovery of possession. However, during the pendency of the suit, after the defendants trespassed into the suit property, the petitioner sought for the relief of recovery of possession. Here admittedly, the defendants filed a written statement specifically pleading that they are in a possession of enjoyment of suit property. Therefore, the Court below rightly dismissed the petition. Hence this Court does not find any illegality or infirmity in the order passed by the Court below. Accordingly the Civil Revision Petition is dismissed. However, it is open to the petitioner to file appropriate application seeking appropriate relief, before the Court below, in a manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

23.03.2021

Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

klt

G.K.ILANTHIRAIYAN, J.

klt

To

- 1.The Learned Principal District Munsif, Tindivanam.
- 2.The Section Officer, VR. Section, High Court, Madras.



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