

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD)No.1816 of 2017
and CMP No.8694 of 2017

Hemakumari ... petitioner

Vs.

1.D.Dharamraja
2.D.Bhuvaneshwari
3.L.Dhanasekar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decretal order in IA.No17597 of 2012 in OS.No.3590 of 2011 dated 01.07.2015 on the file of the I Assistant City Civil Court, Madras.

For Petitioner : Mr.V.Lakshminarayanan
For Respondents : Mr.P.B.Balaji for R3.
Not ready – R1 and R2.

ORDER

(This case has been heard through video conference)

This petition has been filed seeking to set aside the order made in IA.No17597 of 2012 in OS.No.3590 of 2011 dated 01.07.2015 on the file of the I Assistant City Civil Court, Madras.

2. The petitioner is the plaintiff in OS.No.3590 of 2011 filed seeking for permanent injunction restraining the respondents/defendants his men, agents, servants, subordinated or anybody claiming through him from in any manner interfering with the plaintiffs peaceful possession and enjoyment and dealing with the suit schedule property.

3. The respondents/defendants had filed written statement denying title and ownership of the plaintiff stating that the schedule mentioned property belong to Parasurama Eswaran Koil, Ayanavaram. Based on the written statement the title of the petitioner/plaintiff was questioned by the respondents/defendants. The petitioner had filed IA.No.17597 of 2012 under Order 6 Rule 17 CPC to amend the prayer in the plaint in OS.No.3590 of 2011 to grant decree of declaration declaring that the petitioner/plaintiff is the absolute owner of the suit schedule property. The respondents/defendants had filed counter stating that the suit was filed for grant of permanent injunction without seeking any further relief of declaration of title, the application filed for amendment, without reserving right or seeking leave to sue later is not maintainable.

4. The trial Court after hearing both sides had dismissed the petition against which the present civil revision petition is filed.

5. Mr.V.Lakshminarayanan, the learned counsel for the petitioner would submit that the petitioner is the absolute owner of the schedule mentioned property and he has been in possession and enjoyment of the same from the date of purchase i.e 27.09.1995 and after purchase she had mutated the revenue records in respect of the suit property in her name and she had been paying property taxes and water charges. The petitioner intended to put up a compound wall around her property and since it was objected and prevented by the respondents/defendants, the petitioner/plaintiff had filed the suit seeking for permanent injunction. The respondents/defendants had filed written statement denying title of the petitioner thereby necessitating the petitioner to file a petition to amend the prayer for declaration. He would further submit that it is a settled law when the petitioner is the original owner of the property and when a cloud is raised over the petitioner's title with regard to the property and the title of the petitioner is denied,

and the prayer for declaration is necessary and thereby the petition had been filed to amend the suit into one for declaration. He would submit that the case is only at the pre-trial stage and the amendment does not alter the nature of the suit and thereby and no prejudice would be caused to the respondents. Whereas, the trial Court without properly analysing the legal requirements taking into consideration extraneous material had rendered a finding that as per the sale deed, the plaintiff had purchased only the superstructure in the suit property and the vacant land on which the building was constructed belongs to the temple. In such circumstances, the petitioner has to necessarily file a petition seeking for amendment. The trial court even without any evidence being let in has also rendered a wrong finding that the petitioner is not entitled to claim ownership and that the temple is not added as a party to the suit. The learned counsel would further submit that the petition has been filed in order to avoid multiplicity of proceedings and further the amendment sought for does not alter the cause of action and the nature of the suit.

6. In support of his contention the learned counsel for the petitioner would rely on the judgment of the Hon'ble Apex Court in

Anathula Sudhakar v. P.Buchi Reddy (dead) and others reported in (2008) 4 SC 594.

“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for

declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

7. Mr.Balaji representing the respondents would submit that

even as per the sale deed the petitioner has purchased only the

superstructure and the land on which the construction is put up belongs to the temple and the temple has not been impleaded in the suit.

8. In reply, Mr.V.Lakshminarayanan, learned counsel for the petitioner would submit that neither the temple nor the authorities of the temple are interfering with the right of the petitioner and they are also not denying or disputing the right of the petitioner. It is the respondents who are interfering with the possession of the petitioner and denying the title of the petitioner and thereby the petitioner does not have to implead the temple as party.

9. Heard the counsels and perused the materials on record.

10. In this case, the petitioner/plaintiff has filed the suit for permanent injunction, since the possession was alleged to be interfered with by the respondents/defendants. The respondents/defendants had filed written statement in which they have denied and disputed the title of the petitioner/plaintiff and thereby it has become necessary for the

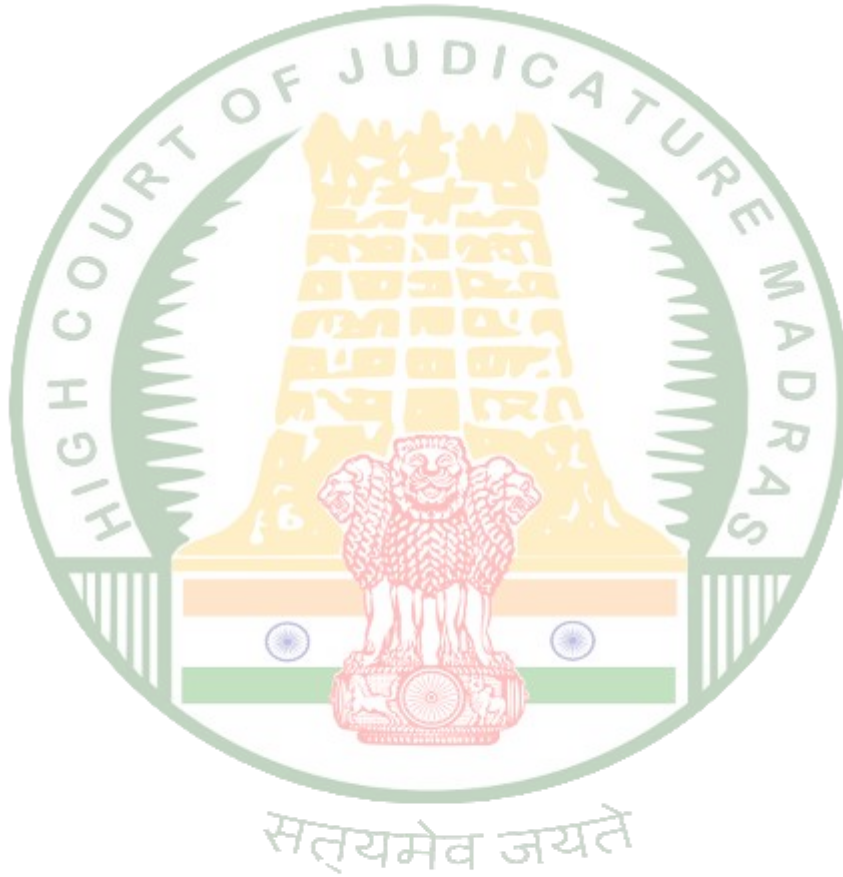
petitioner to prove her title by seeking for a declaration as cited in Anathula Sudhakar case (cited supra). The Apex Court has held that where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. As rightly pointed by the petitioner, in the written statement the respondents have disputed the petitioner's title over the property and thereby there is a need for petitioner/plaintiff seeking for amendment. The trial Court without taking into consideration the need and necessity had erred in dismissing the petition and thereby the impugned order has to be set aside.

11. In the result, the civil revision petition is allowed by setting aside the order made in IA.No17597 of 2012 in OS.No.3590 of 2011 dated 01.07.2015 on the file of the I Assistant City Civil Court, Madras. No costs. Consequently, connected miscellaneous petition is closed.

17.06.2021.

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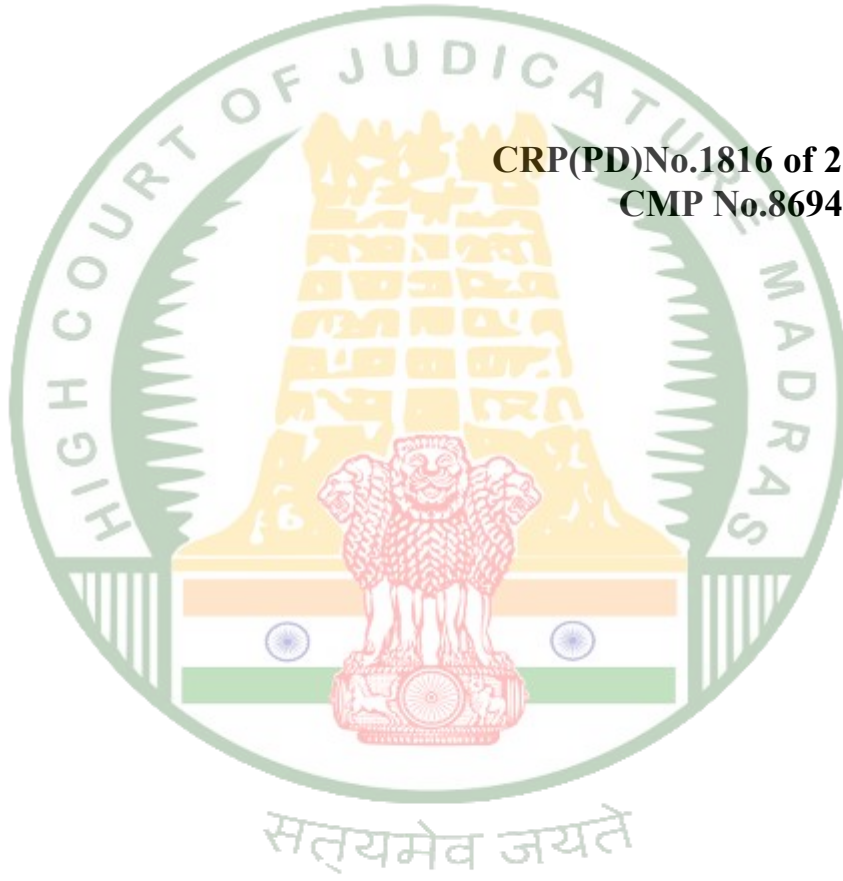
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The I Assistant City Civil Court, Madras.



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