

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.688 of 2017
and C.M.P.No.3481 of 2017

1.A.Govindhasamy
2.E.Venugopal (died)
3.Jayalakshmi
4.N.Gomathy

.. Petitioners

*(Petitioners 3 and 4 were brought on record
as legal heirs of the deceased 2nd petitioner
vide order of this Court dated 16.08.2021 made
in C.M.P.No.10813/2021 in C.R.P.No.688/2017)*

Vs.

R.Subramani

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.07.2016 made in I.A.No.1924 of 2015 in O.S.No.230 of 2013 on the file of the District Munsif Court, Madurantakam.

For Petitioners : Mr.M.S.Subramanian

For Respondent : Mr.Nagusah

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 04.07.2016 made in I.A.No.1924 of 2015 in O.S.No.230 of 2013 on the file of the District Munsif Court, Madurantakam.

2.The petitioners 1 and 2 were defendants in O.S.No.230 of 2013 on the file of the District Munsif Court, Madurantakam, filed by the respondent. The respondent filed the said suit for permanent injunction, restraining the petitioners 1 and 2 from interfering with his peaceful possession and enjoyment of the suit property, declaration to declare the order dated 08.08.2013, passed by the Sub-Collector as void, for mandatory injunction directing the petitioners 1 and 2 to remove the cattle hut put up in part of the suit schedule property, for permanent injunction restraining the petitioners 1 and 2 to change or mutate the record in Patta No.353 in the suit property and for a declaration to

declare the sale deed in Doc No.3504/2013 dated 05.09.2013, executed by the 1st petitioner in favour of the 2nd petitioner, as null and void. The petitioners 1 and 2 filed written statement and are contesting the suit. The respondent filed I.A.No.1924 of 2015 for amendment of the plaint as mentioned in the petition. According to the respondent, he is the absolute owner of the suit property and the 1st petitioner, who is a stranger to the suit property, has unauthorizedly put up cattle shed in the suit schedule property. The 1st petitioner sought for a patta. The same was rejected by the Tahsildhar. The 1st petitioner filed Writ Petition No.28830 of 2012 and this Court, by the order dated 05.02.2013, directed the Sub-Divisional Officer to conduct an enquiry. The Sub-Collector (In-charge), by an order dated 08.08.2012, issued joint patta in the name of the 1st petitioner and the respondent. The respondent has filed an appeal to the District Revenue Officer, Kancheepuram. While the appeal was pending, the 1st petitioner executed a sale deed in favour of the 2nd petitioner in Doc.No.3504/2013 on 05.09.2013. In view of execution of the sale deed, the petitioners 1 and 2 may interfere with possession and enjoyment of the respondent and hence, prayed for amendment of the plaint and

schedule of the suit properties. The 2nd petitioner filed objection, contending that the respondent is introducing three schedules of properties, whereas, originally there was only one Schedule of the property and hence, he is introducing new cause of action. By amendment, the respondent is attempting to include the 2nd petitioner's property and prayed for dismissal of I.A.No.1924 of 2015. The learned Judge, by the order dated 04.07.2016, considering the averments in the affidavit and objections of the 2nd petitioner, allowed I.A., holding that the suit is in the stage of framing issues and no prejudice would be caused to the petitioners 1 and 2, as the respondent is giving better particulars for proper adjudication of the issue in the suit.

3.Against the order dated 04.07.2016 made in I.A.No.1924 of 2015 in O.S.No.230 of 2013, the present Civil Revision Petition has been filed.

4.Pending Civil Revision Petition, the 2nd petitioner died. By the order of this Court dated 16.08.2021, the petitioners 3 and 4 were

brought on record as legal heirs of the deceased 2nd petitioner. The learned counsel appearing for the petitioners reiterated the averments in the objection filed in the affidavit and submitted that the learned Judge failed to consider that the respondent is introducing a new cause of action, new relief and changing the nature of the suit by including 3 Schedule of the properties in the suit, whereas there was originally only one Schedule of the property and prayed for allowing the Civil Revision Petition and dismissal of I.A.No.1924 of 2015 in O.S.No.230 of 2013.

5.Heard the learned counsel appearing for the petitioners as well as the respondent and perused the entire materials available on record.

6.From the materials on record, it is seen that the respondent has filed suit for permanent injunction restraining the petitioners 1 and 2 from interfering with possession of the respondent, declaration to declare the order dated 08.08.2013, passed by the Sub-Collector as void, for mandatory injunction directing the petitioners 1 and 2 to remove the cattle hut put up in part of the suit schedule property, for permanent

injunction restraining the petitioners 1 and 2 to change or mutate the record in Patta No.353 in the suit property and for a declaration to declare the sale deed in Doc No.3504/2013 dated 05.09.2013, executed by the 1st petitioner in favour of the 2nd petitioner, as null and void. The respondent has filed appeal to the District Revenue Officer, challenging the order of the Sub-Collector. While the appeal was pending before the District Revenue Officer, the Revenue authority sub-divided the suit property and issued separate patta to the 1st petitioner for 44 sq. meters. After obtaining separate patta, the 1st petitioner sold the property to the 2nd petitioner, pending appeal. In view of the above facts, the respondent has filed the present I.A.No.1924 of 2015, for amendment of the plaint.

7.From the amendments sought for, it is seen that the respondent is seeking to give particulars with regard to sub-division of the property showing the entire suit schedule property as 'A Schedule' property and after amendment, the same was sub-divided as Survey No.443/26A and 443/26B and the same was shown as 'C Schedule' and 'B Schedule' properties respectively. By amendment, he is not introducing new

property or changing the cause of action and nature of the suit. Further, in the suit, trial has not commenced and the same is in the stage of framing issues. The learned Judge has considered all the above facts in proper perspective and allowed I.A.No.1924 of 2015 in O.S.No.230 of 2013, by giving cogent and valid reasons. There is no error in the order of the learned Judge, warranting interference by this Court.

In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.08.2021

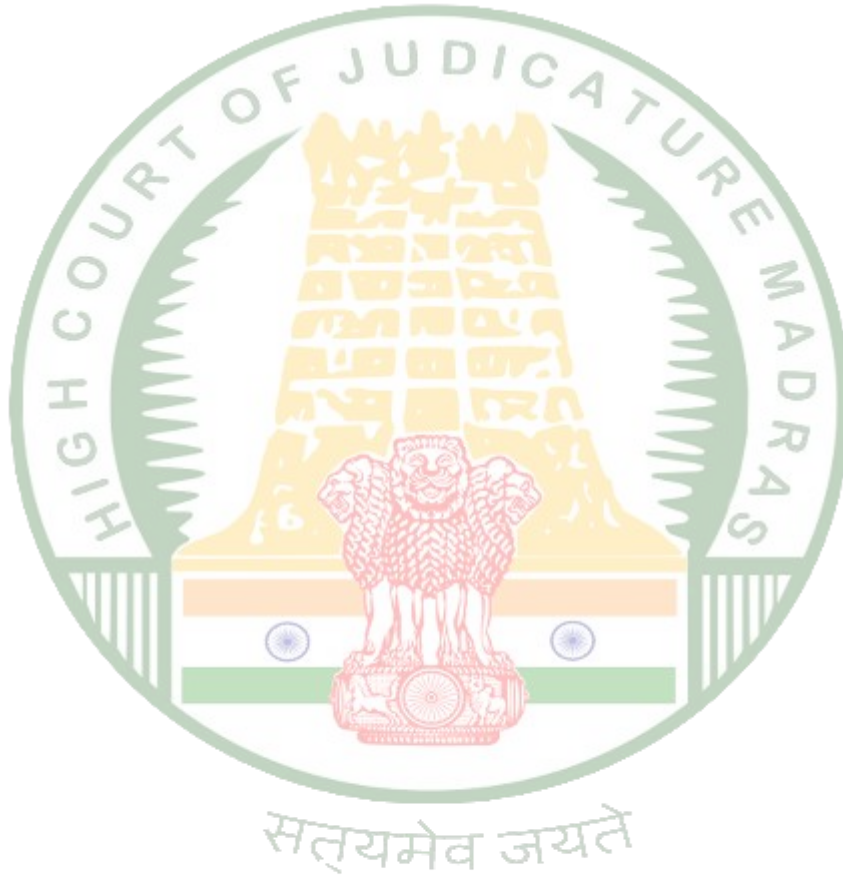
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gsa

To

The District Munsif,
Madurantakam.

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V.M.VELUMANI, J.

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