



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.R.P. (MD) (NPD) No.1198 of 2014

and

M.P (MD) No.1 of 2014

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Karunanidhi (since dead)

1.Neela

2.K.Rajarajan

3.K.Muthumani

4.K.Rajendran

5.Ukkarakalli @ Kundavai Pirati

... Petitioners

-vs-

1.The Tiruchirappalli Co,operative House Construction Society,
Having its registered No.786,
Rep by its Secretary,
Having Office at Makkal Mandram,
Thiallainagar,
Trichirappalli.

2.City Corporation of Tiruchirappalli,
Rep by its Commissioner,
The Executive Authority,
Having Office at Bharathidasan Salai,
Cantonment,
Tiruchirappalli.

3.The Sub Registrar,
Woraiyur Sub Registration,
Having Office At Annamalai Nagar,
Woraiyur,
Tiruchirappalli.

... Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.12.2013 passed in I.A.No.146 of 2012 in A.S.No.155 of 2011 on the file of learned Principal Subordinate Judge, Tiruchirappalli.

For Petitioner : Mr.K.R.Kishore Ram

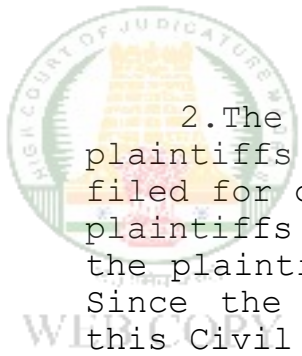
For M/s.M.Siddharthan

For R-2 : Mr.N.S.Karthikeyan

For R-1 and R-3 : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 18.12.2013 passed in I.A.No.146 of 2012 in A.S.No.155 of 2011 on the file of learned Principal Subordinate Judge, Tiruchirappalli.



2.The facts of the case are that the petitioners are the plaintiffs and the respondents are the defendants. The suit was filed for declaration and the same was dismissed, against which, the plaintiffs filed an appeal in A.S.No.155 of 2011. In the appeal, the plaintiffs filed I.A.No.146 of 2012 seeking to amend the suit. Since the said application was dismissed, by the impugned order, this Civil Revision Petition has been filed.

3.The learned counsel for the petitioners would submit that the petitioners after filing the appeal, the first and second respondents had forcibly entered into the suit property and demolished the compound wall and had taken possession of the property and the Court below has admitted the fact that the amendment sought for does not change the nature of the suit and therefore, the Court below ought to have allowed the application otherwise it will lead to multiplicity of proceedings and that if the amendment is not allowed, great prejudice would be caused to the Petitioners and the court below erred in giving findings on merits of the case, while deciding the interim application and in such circumstances, the impugned order is liable to be set aside and this Civil Revision Petition is to be allowed.

4.The learned counsel for the second respondent would submit that since the suit has been dismissed, the petitioners are intending to change the entire structure of the plaint and convert it to recovery of possession and in the appeal, it cannot be altered or amended, the only option left to the petitioners is to file a fresh suit and that the recovery of possession cannot be made in a suit for bare injunction and the amendment will change the very root of the matter and there is no merit in this petition. Hence, the revision is liable to be dismissed.

5.This Court heard the learned counsel for the petitioners as well as the second respondent and considered their submissions and also carefully perused the materials placed on record.

6.Originally, the suit was filed for declaration and the same was dismissed, against which, appeal has been filed where the Plaintiffs had sought to amend the prayer in the suit as one for recovery of possession, by the impugned order, the Court below had dismissed the application. From the records, it is seen that the petitioners have come forward with this amendment as if they were dispossessed during the pendency of the appeal and the application does not disclose on what date, the petitioners were dispossessed and it has been merely stated as only during the pendency of the appeal, they were dispossessed and the petitioners have not filed any application for appointment of Commissioner. On the said aspects, the Court below has rightly dismissed the application, where I do not find any infirmity or irregularity in the order passed by the Court below, which warrants no interference.



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7.In fine, this Civil Revision Petition is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp/msa

To:

The Principal Subordinate Judge, Tiruchirappalli.

+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-23408[F] dated 22/07/2021)

C.R.P.(MD) (NPD) No.1198 of 2014 and
M.P(MD) No.1 of 2014

Dated:
20.07.2021

SJ(CO)

KB(25.11.2021) 3P 3C