



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD)No.2675 of 2014

and

M.P. (MD)No.1 of 2014

1.T.Ramasamy

2.T.Ramasubramanian

... Petitioners/ Respondents/
Defendants

Vs.

Jeyarani @ Ganapathimuthu

... Respondent/Petitioner/Plaintiff

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.407 of 2013 in O.S.No.23 of 2008 on the file of the Additional District Munsif Court, Sankarankovil dated 11.08.2014.

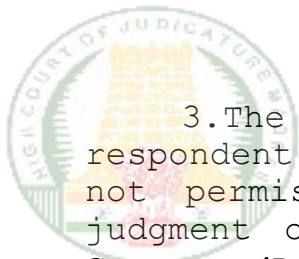
For Petitioners : Mr.M.P.Senthil

For Respondent : Mr.F.X.Eugene

ORDER

This Civil Revision Petition has been filed against the order passed in I.A.No.407 of 2013 in O.S.No.23 of 2008 on the file of the Additional District Munsif Court, Sankarankovil dated 11.08.2014.

2.The petitioner is the defendant in O.S.No.23 of 2008 on the file of the Additional District Munsif, Sankarankovil. The respondent herein is the plaintiff in the said suit. Originally, the respondent / plaintiff filed the suit for permanent injunction, restraining from dividing as house plot, to sell the same to third party and put up any construction and also a mandatory injunction to remove the construction and hand over the vacant possession. During the pendency of the said suit, the respondent herein/ plaintiff filed an application in I.A.No.407 of 2013 to amend the plaint. After hearing the matter, the trial Court allowed the amendment application. Challenging the said order of the trial Court, the petitioner / defendant in the suit, has filed the present revision petition before this Court.



3.The learned counsel for the petitioner would submit that the respondent / plaintiff has taken an inconsistent pleadings which is not permissible under law and he also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar Gurawara (Dead) thr. Lrs Vs S.K.Sarwagi & Co.Pvt.Ltd and another** reported in **(2008) 8 MLJ 307 (SC)**. He would further submit that subsequent to the filing of this revision petition, the respondent/plaintiff has divided the plot and sold to various persons and they have also constructed buildings in the plots. At this stage, if the Civil Revision Petition is not allowed, much prejudice would be caused not only to the petitioner but also the purchaser of the said land. The respondent has taken the amendment petition after a lapse of fifteen (15) years from the date of the suit. Therefore, the order passed by the trial Court is liable to be set aside.

4.The learned counsel for the respondent would submit that the respondent has filed a suit for permanent injunction, restraining the petitioner herein and others, from alienating the house to third party and also mandatory injunction. Subsequently, he has filed I.A.No.407 of 2013 to amend the plaint. Though, the petitioner earlier filed a petition claiming the exclusive right over the property, subsequently, the respondent/ plaintiff has filed the application to amend the plaint as co-owner.

5.Considering the fact that after completion of the pleadings, the trial also commenced and the P.W.1 was examined in chief and the suit is posted for cross examination. Since the defendants have denied the title of the plaintiff, the respondent herein /plaintiff in the suit has filed a petition to amend the plaint for declaration. The suit is only for permanent injunction, restraining the petitioner herein and his men from alienating the property, dividing as house plot and put up construction in the suit property and subsequently for mandatory injunction. At that stage, though the trial has commenced, only the respondent herein / plaintiff was examined as P.W.1 in chief examination and cross examination was not yet commenced, the amendment of the plaint would not prejudice to the petitioner herein. The trial Court, after considering the facts and circumstances of the suit, allowed the said I.A.No.407 of 2013.

6.The learned counsel for the petitioner placed reliance on the judgment reported in **(2008) 8 MLJ 307 (SC)** (stated supra). The facts of the present case is totally different from the judgment referred to by the learned counsel for the petitioner. Accordingly, this Civil Revision Petition stands dismissed. However, the suit is pending from the year 2008. Therefore, the learned Additional District Munsif, Sankarankovil, is directed to dispose the suit, after completion of the pleadings and additional issues if any framed, and dispose the suit within six months from today



(21.12.2021) .

7. With the above direction, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Additional District Munsif Court, Sankarankovil.

+1 CC to M/s.F.X.EUGENE, Advocate (SR-39894[F] dated 22/12/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-39991[F] dated 22/12/2021)

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21.12.2021

RD(4.01.2022) 3P 4C