



C.R.P. No. 4627 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4627 of 2017
and
C.M.P. No. 21783 of 2017

Saroja,
W/o. Gurumurthy

... Petitioner

Versus

1. Rajendran,
S/o. Sethu Vanniyar

2. Chinna Ponnu @ Mahilambal,
W/o. Rajendran

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order passed by the learned District Munsif cum Judicial Magistrate, Vedaranyam made in I.A.No.494 of 2016 in O.S.No.28 of 2014 dated 04.10.2017.



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For Petitioner : Mr.P.Dinesh Kumar

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed challenging the order dated 04.10.2017 passed in I.A.No.494 of 2016 in O.S.No.28 of 2014, on the file of District Munsif cum Judicial Magistrate, Vedaranyam.

2. The petitioner herein is the plaintiff in the suit in O.S.No. 28 of 2014 seeking for the relief of permanent injunction with regard to the suit property. The defendants contested the suit stating that they are cultivating the lands, thereby they claimed that they are in possession of the property. Therefore, the plaintiff filed an application in I.A.No. 494 of 2016 praying to amend the prayer in the plaint by including alternative remedy of recovery of possession. The said application was contested by the defendants stating that without any cause of action and documents, the plaintiff claimed recovery of possession. But, on considering both side submissions, the trial judge dismissed the application stating that there is no cause of action to include such prayer in the suit and also reason for delay



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was not properly explained.

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3. The learned counsel for petitioner would submit that the trial court failed to take note that to avoid multiplicity of proceedings and for adjudicating the dispute in the suit between the parties, it is necessary to include alternative relief of recovery of possession with regard to suit 'B' schedule property. But, the trial court erroneously held that he has not approached the court with clean hands and it can be decided only at the time of trial. Furthermore, the pleadings also to be true, by abundant caution, he wanted to include the alternative relief of recovery of possession. There is no representation on the side of respondent.

4. On perusal of records, it seems that earlier, the suit was filed for the relief of bare injunction and subsequently, the plaintiff wanted to amend the prayer including the alternative relief of recovery of possession for the reason that the defendants cultivating the property. So, now the dispute arose with regard to possession of property. Hence, the plaintiff is entitled to raise the plea of alternative prayer of recovery of possession and the same



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can be amended in the plaint before the stage of pre-trial. Accordingly, this

Civil Revision Petition is allowed and the order passed by the trial judge in I.A.No. 494 of 2016 in O.S.No. 28 of 2014 is set aside and the petitioner is permitted to amend the plaint. However, liberty is granted to the respondents to file additional written statement, if any. Since the suit is pending from the year of 2014, the Trial Court is directed to proceed with the trial and dispose the case within a period of five months from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

08.09.2022

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

District Munsif cum Judicial Magistrate,
Vedaranyam.



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T.V.THAMILSELVI, J.

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