



C.R.P.(PD)No.3591 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3591 of 2019
and C.M.P.No.23524 of 2019

Semba Gounder

.. Petitioner

Vs.

1.Palaniammal
2. Murugesu Bhoopathy
3.Muthuvel

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.11.2018 in I.A.No.268 of 2018 in O.S.No.115 of 2015 on the file of the District Munsif Court at Sankagiri.



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For Petitioner : Ms. G.Lavanya
for Mr.T.Saikrishnan
For Respondents : Mr.A.M.Amuthaganesh

ORDER

The civil revision petitioner is the plaintiff and the 1st respondent is the defendant. O.S.No.115 of 2015 on the file of the learned District Munsif at Sankagiri, was originally presented as O.S.No.131 of 2015 before the learned Vacation Civil Judge at Salem. The suit is filed for a bare injunction restraining a sole defendant from interfering with the peaceful possession and enjoyment of the plaintiff.

2. Pending the suit, it was claimed that the defendant had alienated the property to one Murugesha Bhoopathy and one Muthuvel. In order to implead them, the applications were filed in I.A.No.876 of 2015 and I.A.No.1201 of 2015. The said applications stood allowed. Murugesha Bhoopathy and Muthuvel were impleaded as the defendants 2 and 3 in



3. In the meantime, the original sole defendant Palaniammal filed a written statement whereunder she has stated that the suit for mere injunction is not maintainable and the relief of title has also to be sought for. This is clear from paragraph 9 of the written statement. Consequently, an application was moved in I.A.No.268 of 2018 in O.S.No.115 of 2015 seeking amendment to the averments made in the plaint as well as incorporating certain reliefs including that of declaration of title.

4. The learned trial Judge treated this application as if it is an application for consequential amendment pursuant to I.A.Nos.876 and 1201 of 2015 and held that since no such relief was granted in the aforesaid applications, the prayer for seeking amendment of declaration of title was not maintainable.

5. Aggrieved by the order passed in the said I.A.No.268 of 2018 in



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O.S.No.115 of 2015, dated 19.11.2018, the present revision has been filed by the plaintiff.

6. Heard Ms.G.Lavanya representing Mr.T.Saikrishnan and Mr.A.M.Amuthaganesh, learned counsel for the respective parties. I have carefully gone through the records.

7. It is not in dispute that the suit was originally filed for bare injunction. Pending the litigation, it transpires that the sole defendant had sold the property to the defendants 2 and 3 and therefore, they were rightly impleaded as per the orders of the trial Court in I.A.Nos.876 and 1201 of 2015. A perusal of the written statement shows that the title of the plaintiff having been denied, if the plaintiff were to continue the suit as it is, it could result in the plaintiff being non-suited. Therefore, the plaintiff has taken precaution to amend the plaint and to include the averments in so far as the defendants 2 and 3 are concerned. Such situation is permissible as per the judgment of the Supreme Court in ***Anathula Sudhakar vs. P.Buchi Reddy (dead) by legal heirs and others***



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2008 (4) SCC 594 (paragraph 13.1 to 13.3).

8. In the light of the settled position of law, where the title of the plaintiff has been denied, the plaintiff is entitled to amend the plaint to seek for appropriate reliefs. The trial Court erred in dismissing the application for amendment. Consequently, I am constrained to interfere with the order of the trial Court and the order passed in I.A.No.268 of 2018 in O.S.No.115 of 2015 by the District Munsif Court at Sankagiri dated 19.11.2018 is set aside. The plaintiff is granted leave to amend the plaint. On such leave being exercised, the defendant must be granted sufficient opportunity to file an additional written statement.

9. Mr.A.M.Amuthaganesh requests for expeditious disposal of the suit in O.S.No.115 of 2015. Once the pleadings and issues are completed, the learned trial Judge is requested to consider the expeditious disposal of the suit.

10. With the above observations, the Civil Revision Petition stands



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allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

The District Munsif, Sankagiri.

V.LAKSHMINARAYANAN,J.

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