



CRP(MD).NO.1372 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No.1372 of 2009

and

M.P(MD).No.1 of 2009

- 1.Kamalam Nadathi (died)
- 2.Ramakrishnan ...Petitioners/Petitioners/Appellants
- 3.Kala
- 4.Rani
- 5.ChristuRaj
- 6.Sobha ... Petitioners

(P3 to P6 are brought on record as LR's of deceased 1st petitioner vide Court order dated 09.10.2017 made in C.M.P.(MD).No.8002 of 2017 in CRP(MD).No.1372 of 2009)

Vs.

- 1.Arulappan Nadar (died)
- 2.Muthayyan
- 3.Govindan
- 4.Seshayyan
- 5.Thankaraj
- 6.Sundari
- 7.Rosammal
- 8.Sumathi ... Respondents/Respondents/Defendants

(R5 to R8 are brought on record as LR's of the deceased R1 vide Court order dated 20.11.2020 made in C.M.P(MD).NO.8003 of 2017 in CRP(MD).No.1372 of 2009)

PRAYER : Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order passed in



CRP(MD), NO.1372 of 2009

I.A.No.3 of 2009 in A.S.No.108 of 2005 dated 15.07.2009 on the file of the Subordinate Court (Camp), Kuzhithurai.

For Petitioner : Mr.H.Thayumanasamy
For Respondents : Mr.M.P.Senthil (for R6 to R8)
No representation (for R2 to R5)

ORDER

The present civil revision petition has been filed by the appellant in A.S.No.108 of 2005 pending on the file of the Subordinate Court, Kuzhithurai challenging the order passed in I.A.No.3 of 2009, in which, the First Appellate Court has rejected the application for amendment of plaint.

2. Originally, the plaintiffs/revision petitioners had filed O.S.No.350 of 1997 on the file of the District Munsif Court, Kuzhithurai, for the relief of declaration of title and joint possession over the suit schedule property, consequentially, the plaintiffs had further prayed that the defendants may be enjoined from disturbing the possession of the plaintiffs. The trial Court, after consideration of the oral and documentary evidence, dismissed the suit. As against the same, the plaintiffs have filed A.S.No.108 of 2005. While the first appeal was pending for nearly 4 years, I.A.No.3 of 2009 was filed by the plaintiffs



CRP(MD), NO.1372 of 2009

seeking to insert para No.3 in the body of the plaint and to amend the plaint prayer and the schedule of property.

3. According to the learned counsel appearing for the revision petitioners, the defendants are in permissive occupation of 1.5 cents out of 6 cents of the suit schedule property and the same has not been properly carved out of A schedule property. Hence, the present application was filed to amend the plaint to incorporate para No.3 in the body of the plaint and for carving out 1.5 cents out of A schedule property and to it brand as B schedule property so that recovery of possession be sought for over the B schedule property. This application was dismissed by the First Appellate Court on the ground that the plaintiffs are attempting to introduce a new cause of action at the appellate stage and the application has been filed after the delay of 4 years, after filing of the first appeal. The said order is under challenge in the present revision petition.

4. According to the learned counsel for the petitioners, already pleadings are available in the plaint and there would not be any necessity whatsoever to remand the matter by the First Appellate Court to the trial



CRP(MD), NO.1372 of 2009

Court. The plaintiffs have already pleaded that the defendants are in permissive occupation and the only mistake that was committed by the plaintiffs was not to specifically carve out the encroached portion of the defendants. It will not result in change of cause of action or introduce a new cause of action. The trial Court has dismissed the suit only on the ground that there was no clarity on the part of the plaintiffs with regard to the consequential prayer for injunction. Hence, in order to rectify the said defect, the present revision is filed. Therefore, he prayed that the amendment application may be allowed.

5. Per contra, the learned counsel appearing for the respondents/defendants had contended that there was only one schedule of property and the plaintiffs had claimed title and possession over the entire 6 cents of land. However, before the First Appellate Court the plaintiffs have attempted to contend that they are in possession of only 4.5 cents and the rest of 1.5 cents is in occupation of the defendants. The 1.5 cents, which is in occupation of the defendants, has now been carved out as B schedule property and the plaintiffs now seek recovery of possession. Hence, the learned counsel appearing for the respondents has contended that the petitioners have introduced a new cause of action,



CRP(MD), NO.1372 of 2009

that too, at the appellate stage and hence, the said application is not maintainable.

6. I have considered the submissions made on either side.

7. There is no dispute that the suit filed by the plaintiffs for declaration of title and consequential injunction for an extent of 6 cents of land has been dismissed. Now, according to the plaintiffs, they are not in a possession of the entire 6 cents of land, but they are in possession of only 4.5 cents. The rest of 1.5 cents is in the permissive occupation of the defendants. Therefore, they contend that the 1.5 cents shall be carved out of the schedule of property and the original schedule may be captioned as A schedule property and the 1.5 cents may be captioned as B schedule property. The plaintiffs have further prayed for a recovery of possession of the 1.5 cents. It is therefore clear that the plaintiffs are introducing a new cause of action that they are not in possession of 1.5 cents and incase, if the said amendment is allowed, naturally, the suit has to be remitted back to the trial Court for permitting the defendants to file an additional written statement and the suit has to be retried. The suit has been dismissed by the trial Court mainly on the ground that the



CRP(MD), NO.1372 of 2009

plaintiffs were not clear enough with regard to the prayer for injunction.

So, viewed from any angle, this Court does not find any illegality or irregularity in the order passed by the First Appellate Court in rejecting the application for amendment. However, the plaintiffs are entitled to seek for a decree for declaration of title and consequential injunction based upon the existing pleadings and the prayer already made in the suit.

8. With the aforesaid observations, the Civil Revision Petition stands disposed of. The learned First Appellate Judge is directed to dispose of the first appeal without being influenced by any one of the observations made in the amendment application by the First Appellate Court or by this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

14.02.2023

Index : Yes / No

Internet : Yes / No

Rmk

To

1. The Subordinate Judge, Kuzhithurai.



WEB COPY



CRP(MD).NO.1372 of 2009

R.VIJAYAKUMAR ,J.,

Rmk

Order made in
CRP(MD).No.1372 of 2009

Dated:
14.02.2023