



C.R.P(MD)No.73 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.73 of 2019

and

C.M.P(MD)No.360 of 2019

Kaliamoorthy

...Petitioner/Appellant/
Plaintiff

Vs.

1.S.Parvathy

2.S.Rajagopal @ Baskar

3.Kalavathi

4.S.Sankar

5.S.Karunakaran

6.P.Kamalaveni

7.R.Subramani

8.R.Kaalimuthu

...Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the original records pertaining to I.A.No. 417 of 2017 in A.S.No.17 of 2016 on the file of the learned Principal District Judge, Tiruchirapalli and set aside the same.



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For Petitioners : Mr.Nirajan S.Kumar

For Respondent : Mr.R.Narayanan

ORDER

This civil revision petition has been filed against the order passed by the learned Principal District Judge, Tiruchirapalli in I.A.No.417 of 2017 in A.S.No.17 of 2016.

2. The petitioner is the appellant/plaintiff before the Trial Court. It appears that he filed a suit in O.S.No.936 of 2010 for declaration and permanent injunction, which was ultimately dismissed on 21.07.2015. Hence, he preferred an appeal in A.S.No.17 of 2016. During the pendency of the appeal, the petitioner has filed an application to amend the prayer so as to have the relief of recovery of possession, since the possession was delivered upon the plaintiff in pursuance of decree in O.S.No.936 of 2010, which was appealed in A.S.No.17 of 2016. Against the order of delivery, it appears that the petitioner herein has moved an application for re-delivery in E.A.No.39 of 2012, which was subsequently dismissed on 12.01.2016.



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3. The learned counsel for the plaintiff/appellant submits that in E.P.No.139 of 2010 in O.S.No.936 of 2010, when the relief of re-delivery was dismissed, the appellant wanted to amend the plaint by including the prayer for possession in appeal in A.S.No.17 of 2016.

4. However, the Court below has dismissed the application on the ground that, though delivery was taken during the trial of O.S.No.936 of 2010, the non-filing of the application to amend the plaint so as to include the delivery of possession would dis-entitle the petitioner from getting any relief from the appellate Court and ultimately rejected the application on the above ground.

5. The learned counsel for the petitioner submit that since the re-delivery petition has already been dismissed and that the possession has already been taken by the defendants, if in any case, the declaration decree is granted then they become remedy less.

6. This Court is not in a position to agree with the submission of the learned counsel for the petitioner. In the event of any declaratory decree is granted, then naturally this petitioner may have re-delivery. According to the plaintiff, the defendant took possession during the



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pendency of the suit. Further, the nonchalant conduct was also considered for dismissing the amendment application. Therefore, this Court could not find any infirmity in the order of the learned Trial Judge.

7. In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The learned Principal District Judge,
Tiruchirapalli.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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