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C.R.P.(PD).No.4319 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4319 of 2023

and

C.M.P.No.26287 of 2023

Kuppusamy

... Petitioner

VS

1.Thankaraj

2.Rajeswari

3.Deepan Kumar

4.Sanjeev Kumar

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Order and Decretal Order dated 14.07.2022 passed in I.A.No.4 of 2023 in O.S.No.273 of 2015, on the file of the learned District Munsif Court, Chengalpattu.

For Petitioner : Mr.Irfan Sherif

For Respondents : Mr.D.Krishna Pradeep
for M/s.N.Damodaran



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ORDER

This Civil Revision Petition arises against the order of the learned District Munsif Court at Chengalpattu in I.A.No.4 of 2023 in O.S.No.273 of 2015, dated 14.07.2022.

2. O.S.No.273 of 2015 was presented for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff.

3. It is the case of the plaintiff that the suit property was a family property of his father Narayanan and his paternal uncle Veerasamy. The said Narayanan and Veerasamy partitioned the suit property among themselves by way of a registered Sale Deed dated 02.03.1967. As per the Partition Deed, 'A' schedule property was allotted to Veerasamy and 'B' schedule property was allotted to Narayanan. After the partition of the property, his father had been enjoying it independently. Narayanan passed away intestate on 16.07.1993 leaving behind his wife, daughters, and his only son, the plaintiff, to succeed to his estate. The suit property was allotted to the plaintiff by



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virtue of a Partition Deed dated 29.10.2014 registered in Document No.2343/2014 on the file of the Joint-II, Sub-Registrar Office at Chengalpattu. Since the defendants were attempting to interfere with the possession of the property, the plaintiff filed the suit for permanent injunction.

4. On receipt of the summons, the defendants entered appearance and filed a detailed written statement.

5. According to them, they are the owners of the property and the plaintiff has no right, title or interest over the same. Thereafter, the plaintiff pleaded that he had been dispossessed and hence, filed an application to withdraw the suit and file a fresh suit for the same cause of action. This application in I.A.No.2 of 2021 came to be dismissed on 25.01.2023. Thereafter, the plaintiff took out the present application, pleading that pending the suit, he had been dispossessed and the defendants had put up a super structure. Therefore, he wanted to amend the prayer from one seeking relief of permanent injunction to one seeking relief of recovery of possession.



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6. A counter was filed to this application stating that the defendants had developed the layout and had put up a compound wall between the suit property and their property long time ago and that seeking possession of the suit schedule mentioned property does not arise because it was always under the occupation of the defendants.

7. The learned Trial Judge on receipt of the counter, proceeded to dismiss the petition stating that unless and until the relief of declaration of title is sought for, the prayer for recovery of possession cannot be granted. Against which, the present civil revision petition.

8. Heard Mr.Irfan Sherif, learned counsel appearing for the petitioner and Mr.D.Krishna Pradeep learned counsel appearing for the respondents.

9. I have carefully considered the arguments on either side and perused the records.



WEB COPY 10. The test for allowing an amendment is whether it changes the cause of action or the frame of the suit or by allowing the amendment application, the plaintiff is attempting to withdraw an admission that he had already made during the course of the proceedings.

11. Here is a simple case which has been brought forth by the plaintiff, stating he is in possession of the property. The suit schedule mentioned property, on the date of presentation of the plaint, is shown to be a vacant land. He claims possession by virtue of the fact that his father obtained the property by way of a partition. In other words, it relies on the idea that possession follows title. The plaintiff would plead that pending the litigation, the defendant encroached upon the property and started putting up a super structure. Therefore, he was forced to amend the plaint.

12. Instead of directing the plaintiff to file a fresh suit for recovery of possession, the Court could have allowed the amendment application on the basis of the very same pleadings with only an alternate prayer and proceeded



WEB COUNCIL

further. The view of the learned Judge that unless and until declaration of title is sought, recovery of possession cannot be obtained, is indeed a very unique proposition, and I am not *ad idem* of the said views. Civil Laws knows of a suit for bare injunction and it also knows of the suit filed only for bare recovery of possession. Unless and until the plaintiff feels that his title has been denied, he need not sue for declaration of title. The expensive relief of declaration of title is necessary, as pointed out by the very judgment relied upon by the learned Trial Judge in **Ananthula Sudhakar vs. P.Buchi Reddy, (2008) AIR SCW 2692 SC**, only if the defendant casts a cloud over the title of the plaintiff. That is not the case here, and I do not see reason as to how the said judgment is applicable to the present case. The plaintiff has not amended the source of his title, nor has he pleaded a new case. All that he seeks for is a different relief in the light of the subsequent events.

13. Since the plaintiff has sought the leave of the Court to amend and as the suit has been pending for 9 years, I am inclined to allow the civil revision petition on cost, the plaintiff shall pay a sum of Rs.5,000/- to the learned counsel, who appeared for the defendants in the Court below. The



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said cost shall be paid within a period of eight weeks from the date of receipt

of copy of this order.

14. Accordingly, the Civil Revision Petition stands allowed. The order passed by the learned District Munsif, Chengalpattu, in I.A.No.4 of 2023 in O.S.No.273 of 2015, dated 14.07.2022 is set aside. Leave to amend the plaint is granted to the plaintiff. Needless to point out the defendants will be entitled to file their additional written statement once the amended plaint is served on them. Consequently, the connected civil miscellaneous petition is closed.

02.08.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The District Munsif Court,
Chengalpattu.



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V.LAKSHMINARAYANAN, J.

dm

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