



C.R.P.(MD)No.1900 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1900 of 2024

and

C.M.P.(MD)No.10765 of 2024

A/M. Vittoba Bajanai Madam,
Family Private Trustee,
Represented by its Secretary,
N.Selvaraj Naidu.

...Petitioner/Petitioner/Plaintiff

Vs.

Ethiraj (Died)

1.Selvaraj

2.Janardhanan

3.Narashimman

4.Hari

5.The Executive Engineer,
TNEB,
Muthumariamman Arch Near,
Trichy Road,
Pudukottai District.

6.The Assistant Engineer,
North TNEB,
Old Bus Stand,
Pudukkottai District.

Vijaya (Died)



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7.Backiyalatchumi

8.Susila

9.Dhanalatchumi

... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 02-07-2024 made in I.A.No.3 of 2024 in O.S.No.322 of 2008 on the file of the District Munsif Court, Pudukkottai, and allow this civil revision petition.

For Petitioner : Mr.G.Sridharan

For Respondents : Mr.V.S.Badrinath

* * *

ORDER

Heard the learned counsel on either side.

2.The plaintiff in O.S.No.322 of 2008 on the file of District Munsif Court, Pudukkottai is the revision petitioner. The petitioner filed I.A.No.3 of 2024 under Order XVIII Rule 17 of Civil Procedure Code for recalling of P.W.1 for adducing further evidence. The I.A. was dismissed vide order dated 02.07.2024. Challenging the same, this civil revision petition came to be filed.



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3.The learned counsel for the revision petitioner reiterated all the contentions set out in the grounds of revision. He drew my attention to the cross examination of P.W.1. The plaintiff had filed I.A.No.43 of 2019 for amending the plaint to include the relief of declaration and recovery of possession. The affidavit filed in support of the said I.A. read that during the pendency of the suit, the defendants had trespassed into the suit property. Hence, the amendment petition was filed. The I.A. was dismissed as not pressed on 05.02.2019. P.W.1 was cross examined on 17.10.2023 with reference to said I.A.43 of 2019. The learned counsel for the plaintiff did not choose to re-examine P.W.1. After P.W.2 and P.W.3 had been examined, this present I.A. has been filed. The Court below dismissed I.A. for reasons set out in paragraph No.10 of the order. It reads as follows:-

“10.The petitioner has filed this petition seeking to recall PW1 stating that out of poor memory and old age the petitioner failed to state about the subsequent developments regarding the trespass and encroachment pending suit. On perusal of records it is seen that the petitioner had previously filed IA.No.43/2019 seeking recovery of possession by alleging that pending suit the suit property has been encroached by the defendants. Thus it is evident that even assuming there is encroachment pending suit, the petitioner had knowledge of the same way back in year 2019 itself. Therefore the same is not a fact which has subsequently or recently come to the knowledge of PW1 after his evidence is over.



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Further it is pertinent to note that the cross examination of PW1 was completed on 17.10.2023 and thereafter two witnesses have been examined on the side of the petitioner. But the instant petition is filed only thereafter on 04.06.2024. Therefore considering the fact that the petitioner had knowledge of the alleged encroachment in the year 2019 itself, this court is of the view that this petition has been filed with the intention of filling up the omissions and lacunae in the evidence of PW1. Hence this court finds no merit in this petition. Accordingly this petition is dismissed.”

Challenging the same, this civil revision petition has been filed.

4.The learned counsel for the petitioner would contend that P.W.1 is aged about 77 years and that due to lapse of memory, he omitted to explain the reason for not pressing I.A.No.43 of 2019. He also would add that only the pathway leading to the suit property was encroached upon and that since it was subsequently thwarted, there was no need to pursue the said I.A. P.W.1 wants to offer his explanation as to why I.A.No.43 of 2019 was withdrawn. Since it was not done by way of re-examination, P.W.1 wants to recall himself. The learned counsel for the plaintiff / revision petitioner would add that the plaintiff's side is yet to be closed and therefore, no prejudice will be caused to the respondents.



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5.I am not swayed by the said submission advanced by the learned counsel for the plaintiff. The petitioner was examined as P.W.1 and his attention was drawn to the affidavit filed in support of I.A. No.43 of 2019. The petitioner replied to the specific question put up by the learned counsel for the defendants. If explanation was further warranted, it should have been elicited during re-examination. Having failed to do so, the question of recalling the witness does not arise at all. In any event, the suit is one for bare injunction. What is required to be proved is that the plaintiff was in possession on the date of filing of the suit. Subsequent events are rather irrelevant and therefore, the dismissal of I.A.No.43 of 2019 also will not in any way prejudice the case of the petitioner. Interference is not warranted. The suit is 16 years old. The learned trial Munsif is directed to dispose of the suit on merits and in accordance with law within a period of five months from the the date of receipt of a copy of this order.

6.The civil revision petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

12.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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G.R.SWAMINATHAN, J.

ias

To:

The District Munsif Court,
Pudukkottai.

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