

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) NO.1252 OF 2015
AND M.P.NO.1 OF 2015

M.Palani ... Petitioner

Vs.

Sengeni ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 03.09.2014 made in I.A.No.1790 of 2013 in O.S.No.196 of 2013 on the file of the Additional District Munsif, Alandur.

For Petitioner : Mr.R.Bharath Kumar

ORDER

Heard the submissions made by Mr.R.Bharath Kumar, learned counsel for the petitioner and perused the materials available on record.

2.This Civil Revision Petition is directed against the order dated dated 03.09.2014 passed in I.A.No.1790 of 2013 in O.S.No.196 of 2013 by the learned Additional District Munsif, Alandur.

3.The defendant in O.S.No.196 of 2013 is the petitioner in this Civil Revision Petition. The respondent herein had instituted the suit against the petitioner for permanent injunction restraining the defendant, his men, agents, servants, family members or anybody claiming under him or through him in any manner put up any compound wall, gate or in any other form in the common passage morefully described in the Schedule A.

4.The respondent/plaintiff filed an application in I.A.No.1790 of 2013 under Order VI Rules 16 and 17 of the Civil Procedure Code to amend the plaint. The plaintiff has averred in the affidavit filed in support of the application that after institution of the suit, the defendant has erected the gate, which is liable to be removed and hence, he wanted to amend the plaint by including the prayer for mandatory injunction to remove the gate.

5.The application was resisted by the petitioner/defendant stating that even before filing of the suit, the gate was erected and hence, the suit itself has become infructuous and the prayer for amendment cannot be allowed.

The Trial Court allowed the application on 03.09.2014. Aggrieved by the order, the present Civil Revision Petition is filed.

6.Mr.R.Bharath Kumar, learned counsel for the petitioner submitted that even in the written statement filed on 24.06.2013, the petitioner has stated that he has already completed the construction of the compound wall and put up a gate in the property in dispute. It is further submitted that the suit should have been dismissed as infructuous and the application for amendment cannot be entertained.

7.I am not able to agree with the contention of the learned counsel for the petitioner.

8.As per the case of the respondent / plaintiff, after institution of the suit, the petitioner / defendant has erected the gate in the property in dispute and sought for mandatory injunction for removal of the gate.

9.It is settled law that the Court should be liberal in considering application for pre-trial amendment to avoid multiplicity of the proceedings. The Trial Court has rightly allowed the application. Hence, I do not find any reason to interfere with the order impugned in this Civil Revision Petition.

10. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

25.03.2015

Index : Yes/No

Internet : Yes/No

TK

To

The Additional District Munsif
Alandur.

K.KALYANASUNDARAM, J.

TK

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