

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.07.2015

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P. No.2542 of 2015 &

M.P.No.1 of 2015

Balakrishnan

... Petitioner

v.

S.Srinivasan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 22.07.2014 passed in I.A.No.1508 of 2013 in O.S.No.36 of 2011 on the file of District Munsif at Madurantakkam.

For Petitioner : Mr.N.Nagu Sah

ORDER

Challenging the fair and final order passed in I.A.No.1508 of 2013 in O.S.No.36 of 2011 on the file of District Munsif Court, Madurantakkam, the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.36 of 2011 for declaration and permanent injunction. The defendant filed his written statement and is contesting the suit. Thereafter, the plaintiff took out an application in I.A.No.1508 of 2013 seeking for amendment of the plaint by incorporating the prayer for declaration of easementary right over the passage to his property through suit 'B' schedule property to reach the road on the east from the 'A' schedule property of the plaintiff on the west. The defendant opposed the application stating that the plaint cannot be amended for a declaration of easementary right, which is contrary to the original pleading.

3. The Trial Court, after taking into consideration the case of both the parties, allowed the application on payment of cost of Rs.1,000/-.

4. The learned counsel appearing for the petitioner submitted that the amendment sought for by the plaintiff is pre-trial amendment.

5. Therefore, I am of the view that the defendant will have an opportunity of filing an additional written statement and contest the suit on merits.

6. In these circumstances, taking into consideration all these aspects, the Trial Court has rightly allowed the application. I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. However, it is open to the defendant to file additional written statement raising the defences available to him and contest the suit on merits and in accordance with law.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : No
Internet : Yes

15.07.2015

Rj

To

The District Munsif Court,
Madurantakkam

M. DURAISWAMY,J.,

C.R.P.(PD)No.2542 of 2015 &
M.P.No.1 of 2015

15.07.2015