



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.01.2015

CORAM
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

C.R.P.(PD)No.14 of 2015
and
M.P.(MD)No.1 of 2015

P.Balakrishnan .. Petitioner/Petitioner/Defendant

Vs.

A.Masilamoni .. Respondent/Respondent/Plaintiff

Prayer: Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.06.2013 passed in I.A.No.257 of 2013 in O.S.No.37 of 2011 on the file of the Principal District Munsif Court, Nagercoil.

For Petitioner : Mr.D.Nallathambi

ORDER

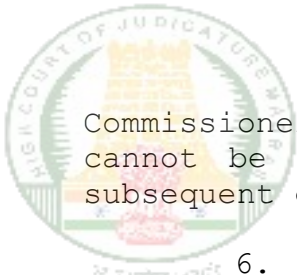
The defendant in O.S.No.37 of 2011 on the file of the Principal District Munsif Court, Nagercol has preferred the above Civil Revision Petition against the order of refusal passed in I.A.No.257 of 2013 filed by the defendant to reject the plaint under Order 7 Rule 11 of the Code of Civil Procedure.

2. Heard the learned Counsel for the petitioner.

3. The plaintiff had originally laid the suit for bare injunction restraining the defendant from altering the nature and character of the "B" schedule property, which is a pathway. Pending suit, an order of *status quo* was granted. An Advocate Commissioner was also appointed to note down the physical features, who has also visited the property and filed his report. According to the plaintiff, after the order of status quo, the defendant had made an encroachment by putting up sunshade and compound wall in the "B" schedule property obstructing the use of pathway by the plaintiff. The prayer for mandatory injunction directing the defendant to remove the encroachment of sunshade and the construction of compound wall was sought for by the plaintiff.

4. The petitioner/defendant contended that there is no cause of action disclosed under order 7 Rule 11(a) of the Code of Civil Procedure and hence, the suit has to be rejected.

5. The Principal District Munsif, Nagercoil, who had occasioned to hear both the parties, had held that the report of the Advocate Commissioner also disclosed that there were recent construction made at two points on the "B" schedule property. The amendment application was taken out by the plaintiff based on the report of the Advocate



Commissioner. Merely because no specific date is mentioned, the plaint cannot be rejected. The Court can always take judicial note of the subsequent events.

6. It is settled principle that whatever is pleaded, that has to be proved and substantiated by evidence. The amendment sought for is only for mandatory injunction, which unless substantiated may not be granted in favour of the plaintiff. Under such circumstances, there is no reason to reject the plaint at the threshold itself. The Principal District Munsif, Nagercoil has rightly dismissed the application as the amendment sought for requires consideration of the oral and documentary evidences. This Court does not find any reason to interfere with the finding of the Principal District Munsif, Nagercoil.

7. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

sub Assistant Registrar

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To

The Principal District Munsif Court,
Nagercoil.

+1cc to MR.D.NALLATAMBI, ADVOCATE SR NO.1256

C.R.P. (PD) No.14 of 2015
and
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