



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .No.2313 of 2014

and

M.P. (MD) .No.1 of 2014

M.Senthil Mahesh ... Revision Petitioner/Petitioner/Plaintiff

vs.

1.Abaranam

2.Santhanam ... Respondents/Respondents/Defendants

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order passed in I.A.No.144 of 2013 in O.S.No.338 of 2012 on the file of the District Munsif cum Judicial Magistrate, Boothapandy, dated 04.11.2013.

For Petitioner : Mr.C.Sankar Prakash

For Respondent : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

ORDER

The plaintiff in O.S.No.338 of 2012 is a petitioner herein. The revision is filed against the order refusing to amend the plaint filed at the stage of issues.

2.The suit was originally filed by the plaintiff for declaration of title and permanent injunction restraining the defendants from interfering with the possession and enjoyment of the property. The suit property comprised of a house as well as a vacant site. However, the defendants claim that there was a building, which was more than 70 years old and they have been living in the same. Pending suit, the plaintiff also filed an application for injunction which was dismissed for default. Whiles, in I.A.No.144 of 2013 filed by the plaintiff alleging that the defendants started construction in the suit property and therefore sought the relief of mandatory injunction directing the defendants to demolish the construction in the suit property.

3.The said application was resisted by the defendants contending that in the plaint, already there was a house, which was more than 70 years old and the same was constructed with sun-dried bricks and mud mortar. As it was damaged in the year 2010 <https://hccases.courts.gov.in/> it was only renovated making it suitable for living. Therefore, the learned counsel for the defendants contended that the amendment should not be allowed.



4.The learned District Munsif cum Judicial Magistrate, Boothapandy, had dismissed the amendment application holding that it is only filed to drag on the proceedings and in the event of allowing the application, there is a lack of prejudice being caused to the other side.

5.The only question that has to be seen is whether the amendment has to be allowed or not.

6.Admittedly, the construction was made only during the pendency of the suit. Being subsequent event, the plaintiff could not have pleaded originally. Any subsequent event, the Court cannot take note of whether the construction was already existing at the time of the suit or it was put up later pending the suit, are all the matter of evidence, which can be decided during the course of trial. Therefore, no prejudice would be caused to the defendant in adding one more relief of mandatory injunction directing the defendants to remove the construction. The learned District Munsif Court has lost sight of the fact that what was pleaded was the subsequent event and the plaintiff should be allowed to amend the plaint. As it is only a pre-trial amendment, no prejudice would be caused to the defendant, in turn, which would only avoid multiplicity of the proceedings.

7.In view of the above, the order made in I.A.No.144 of 2013 in O.S.No.338 of 2012 is set aside and the civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petition is also closed. The defendant is given permission to file his reply statement within a period of two weeks form the date of service of amended plaint.

Sd/-

Assistant Registrar(Per Admn)

/True Copy/

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Boothapandy.

+1cc to Mr.D.Nallathambi ,Advocate Sr.No.11901

+1cc to Mr. C.Sankar Prakash, Advocate Sr.No. 11638

ns

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