

A.No. 4960 of 2016

IN

C.S.No. 889 of 2010

C.V.KARTHIKEYAN .J.

This application has been filed to amend the plaint as follows:-

(i) insert the following para in the plaint in (III) after paragraph 7, as para 8 that “in the above said circumstance, after filing of the suit and notwithstanding the interim order passed by this Hon'ble Court, the third defendant illegally continued the construction and put up a small shed in a north eastern portion of the suit property. Hence, the plaintiff has sought the relief of recovery of possession against the third defendant directing him to hand over the portion illegally occupied by him.

(ii) In plaint (VI) the valuation of the suit should be given as Rs.26,00,100/- instead of Rs.25,00,100/- and the Court fee should be given as Rs.29,533/- instead of Rs.28,533/- and insert “and 25(a)” after 27(c).

(iii) insert the following para in the plaint in (VII) after relief column (a) as (a-1) that “pass a decree of recovery of possession against the third defendant directing him to hand over the portion of the suit property illegally occupied him”

and

(iv) insert the following line at the end of the description of property that “the north eastern portion admeasuring approximately North to South 25 sq.ft., and East to West 15 has been illegally occupied by the third defendant, regarding which the plaintiff has sought recovery of possession”.

2. In the affidavit filed in support of the above application, it had been stated that the suit had been filed for permanent injunction restraining the defendants from disturbing the peaceful possession and enjoyment of the suit property by the plaintiff/applicant. It had been further stated that the suit property originally belonged to Archdiocese of Madars – Mylapore and subsequently, Mrs.Bernathammal purchased the above property by sale deed dated 10.08.1970 registered as Document No. 1678 of 1970. Such sale deed was executed by Rev. Dr. Arulappa, the Archbishop of the said Diocese.

3. It had been further stated that though in the sale deed, the extent of property was given as 3,500 sq.ft., the actual area available on ground is nearly 6,500 sq.ft. The purchaser Mrs.Bernathammal constructed RCC house on the western portion of the property and sold the same in favour of the father of the

applicant/plaintiff. It had been further stated that the applicant/plaintiff constructed RCC building with ground and first floor in the eastern portion of the property. He had also dug a Well in the northern portion and put up an electric motor pump water. He had also used the remaining portion as backyard and had also several Mango and coconut trees. It had been further stated that the first respondent/defendant had made an attempt to trespass into the suit property. Subsequently, a suit was filed in O.S.No. 2993 of 1992 before VIII Assistant City Civil Court, Chennai, which was decreed ex-parte on 10.03.1999. A further attempt to trespass was made on 12.02.2010. The police complaint was given. A third attempt was made on 27.09.2010. At this time, the police did not supported the plaintiff and consequently, this suit has been filed. This Court had also granted an interim injunction in O.A.No. 1134 of 2010. An Advocate Commissioner was appointed and the Advocate Commissioner had given a report mentioning among others as follows:-

“In the eastern side of the suit property, some construction work is going on. There is a newly dug small well having 4 ft breath and 6 to 7 ft depth. I found about 6 to 7 persons were doing construction work of a shed which is approximately 20 x 10 sq.ft. Further I found that shed was put up by using asbestos sheets and hollow blocks. When I enquired the workers who was engaged them, they refused to

say anything. Further, when I was inspecting the suit property, the workers were leaving bu using the space available on the verge of the Adayar river.”

4. It had been further stated that since there is a further construction inspite of interim injunction order, the present application seeking amendment has been filed and also undertaking to pay additional Court fees on the additional vale of the suit.

5. A counter affidavit has been filed stating that the applicant had filed O.A.No. 1290 of 2015 seeking amendment of the plaint by way of a prayer for mandatory injunction and which was withdrawn on 04.07.2016. It had been stated that once again an application has been filed and by this, the nature of the suit is altered and consequently, the application must be dismissed.

6. Heard both sides.

7. It is seen that C.S.No. 889 of 2010 had been field for the following reliefs:-

“(a) pass a decree of permanent injunction restraining the defenants and their men from disturbing the possession and enjoyment of the plaintiff over the suit property,

(b) to pass such further order or other orders deem necessary and fit to the circumstances of the case;

© to award the costs of the suit.”

8. In the said suit, this Court was pleased to grant interim injunction in O.A.No. 1134 of 2010. Subsequently, a Commissioner was also appointed and the Commissioner had also filed his report dated 15.11.2010. The Commissioner had also field a rough sketch along with his report and also the memo on instructions given by the plaintiff.

9. A perusal of the report states that there are workers, who were engaged in putting up construction and when enquired, they did not inform under whose instructions, they were putting up the said construction. Even though, it is a well settled law that no report of a Commissioner cannot be used as proof of possession, it reveals the fact that there is an alteration made to the suit property. It is in view of such alteration that the plaintiff has come forward with this

application which has been filed as stated above seeking amendment adding the relief for recovery of possession over the property in the occupation of the respondent. The learned counsel for the respondent/defendant had stated that by the said application, the nature of the suit will change, I disagree.

10 . The suit has been filed for permanent injunction with respect to the schedule mentioned property namely,

“All that piece and parcel of the land and the building bearing Door N. 22, (Old No. 43), New No.21, Arokiamadha Colony, (LDG Road, Arokiamadha Nagar 2nd Street), Little mount, Saidapet, comprised in T.S.R.No. 37 (Part), in Block No. 2, Venkatapuram Village, Saidapet Taluk within the Registration District of Madras and in the Sub Registration District of Saidapet.

Bounded on the ;

North by : Adayar River

South by : Lay out Road

West by : Mission Land and

East by : Vacant site of Gnanaprakasam

North South; on the East 50 feet,
on the west 5 feet; East-west; on the north 70 feet
on the south 70 feet; in all 3500 sq ft., or the reabout.

Out of the above said property, the portion of the property situated between the plaintiff's houses and the Adayar River is the suit property herein. The extent of the property is 3000 sq.ft., or thereabout.”

11. The present prayer which is for recovery of possession is also for a portion of the said property. The respondent/defendant will be given every opportunity to file written statement and also to challenge the witness for the plaintiff during trial with respect to the constructions which have been put up and with respect to possession.

12. Recovery of possession naturally requires payment of additional court fees and the applicant has also come forward to pay the necessary Court fees. In these circumstances, I find no reason to deny the application to the relief sought. Hence, this application is allowed.

Vsg

.12.2016

C.V.KARTHIKEYAN ,J.

vsg

Pre-delivery order in

A.No. 4960 of 2016

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