

In the High Court of Judicature at Madras

Dated : 14.09.2016

Coram;

The Hon'ble Mr.Justice M.Duraiswamy

C.R.P.(NPD) No.1182 of 2016

and

CMP.No.6468 of 2016

S.R.Sadhakathulla

... Revision Petitioners

Vs.

1. G.Vasanthara

2. A.Shafek Mohideen

... Respondents

Civil Revision Petition filed under Section 115 Code of Civil Procedure against the fair and decreetal order dated 22.03.2016, passed in C.M.P.No.1164 of 2015, in A.S.No.136 of 2013, on the file of I Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.R.Subramanian

For Respondents : Mr.C.Uma Shankar

ORDER

Challenging the fair and final order, passed in C.M.P.No.1164 of 2015, in A.S.No.136 of 2013, on the file of I Additional Judge, City Civil Court, Chennai, first defendant has filed this Civil Revision Petition.

2. The plaintiff filed the suit, in O.S.No.5241 of 2007, on the file of the XIII City Civil Court, Chennai/Trial Court, for permanent and mandatory injunction. The Suit was contested by defendants by filing Written Statement. After trial, the Trial Court dismissed the Suit. Aggrieved over the judgement and decree passed by the Trial Court, the plaintiff preferred an appeal before the Lower Appellate Court, in A.S.No.136 of 2013. Subsequently, in the year 2015, the plaintiff filed a Petition under Order VI Rule 17 CPC., in C.M.P.No.1164 of 2015, to amend the plaint in O.S.No.5241 of 2007. By way of amendment, the plaintiff seeks to include the prayer for permanent injunction, restraining the defendants from interfering with her peaceful possession and enjoyment of the first floor of the suit property, and to restrain the defendants from preventing her from carrying out repairs in the terrace portion of the first floor, and correspondingly, the plaintiff also sought for amendment of the pleadings. The amendment Petition filed by the plaintiff was opposed by defendants by filing a counter affidavit, stating that, if the proposed amendment is allowed, it would be beyond the scope of the Suit filed by the plaintiff. That apart, there is no cause of action for the plaintiff to seek for amendment of the plaint, for the relief of permanent injunction. The Lower

Appellate Court, taking into consideration the case of both parties, allowed the Petition filed by the plaintiff. Aggrieved over the same, the first defendant has filed the present Civil Revision Petition, as stated above.

3. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for respondents.

4. Admittedly, the plaintiff has filed the Suit in O.S.No.5241 of 2007, for permanent and mandatory injunction, restraining the defendants from putting up any further construction in the suit property and to remove the superstructure put up by them. The Trial Court, after taking into consideration the oral and documentary evidence, let in by both the parties, dismissed the Suit. As against the judgment and decree passed by the Trial Court, the plaintiff filed the Appeal in the year 2013, and in the year 2015, the present Petition, viz. C.M.P.No.1164 of 2015 has been filed by her, seeking for amendment of the plaint. In the affidavit, filed in support of C.M.P.No.1164 of 2015, the plaintiff has stated that, she has filed a petition in C.M.P.No.138 of 2015, seeking permission to carry out repairs in the roof of the first floor.

5. The learned counsel for the respondents submitted that, when the said Petition, viz., C.M.P.No.138 of 2015, seeking permission to carry out repairs in the roof of the first floor is pending, the Lower Appellate Court should not have allowed the Petition, permitting the plaintiff to amend the plaint, by incorporating the prayer for permanent injunction, as there is no cause of action for the proposed amendment, as sought for in C.M.P.No.1164 of 2015, and it is beyond the scope of the suit.

6. As rightly pointed out by the learned counsel appearing for respondents, the proposed amendment, if allowed, would run beyond the scope of the suit, and further, there is no cause of action for the proposed amendment, as sought for in the Petition in C.M.P.No.1164 of 2015 . The Lower Appellate Court, instead of allowing C.M.P.No.1164 of 2015, could have decided the Petition filed in C.M.P.No.138 of 2015 on merits. The Lower Appellate Court, while allowing C.M.P.No.1164 of 2015, observed that, in order to avoid multiplicity of proceedings, amendment should be allowed. The findings of the Lower Appellate Court cannot be accepted for the reason that the prayer sought for in the amendment Petition has no connection with the original prayer sought for in the Suit.

7. Under the aforesaid circumstances, the fair and final order passed by the Lower Appellate Court, in C.M.P.No.1164 of 2015, dated 22.03.2016, are liable to be set aside, and accordingly, the same are set aside. Consequently, the Petition filed by the plaintiff in C.M.P.No.1164 of 2015 in A.S.No.136 of 2013, stands dismissed. I direct the I Additional Judge, City Civil Court, Chennai, to consider and dispose of the Petition filed by the first respondent/plaintiff in C.M.P.No.138 of 2015 on merits and in accordance with law, as expeditiously as possible.

8. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P is closed.

14.09.2016

Index : Yes/no

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To
I Additional Judge, City Civil Court, Chennai.

M.Duraiswamy,J.,

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