

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1566 of 2016

and

C.M.P.No.8441 of 2016

Tamil Selvam

... Petitioner

VS

Sagayamary

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order of the learned III Assistant Judge, City Civil Court, Chennai, passed in I.A.No.4640 of 2015 in O.S.No.3958 of 2013 on 27.10.2015.

For Petitioner : Mr.V.Kannan

For Respondent : Mr.T.N.Murali

ORDER

This revision challenges the order of learned III Assistant Judge, Civil Civil Court, Chennai, passed in I.A.No.4640 of 2015 in O.S.No.3958 of 2013 on 27.10.2015.

2. Petitioner/plaintiff filed O.S.No.3958 of 2013 on the file of learned V Assistant Judge, City Civil Court, Chennai, seeking declaration and permanent injunction. Plaintiff moved I.A.No.4640 of 2015 seeking amendment of pleadings. Court below, under the impugned order, dismissed the application. There against, the present revision has been filed.

3. Heard learned counsel for petitioner and respondent.

4. Court below has thought it improper to allow amendment of the plaint as originally the plaintiff had informed the date of measurement of the property by Government Surveyor as '17.10.2007' and again 'November 2007' but by way of amendment, plaintiff sought to inform such action 'in or about the year 2008' on the reasoning that allowing the amendment 'sometimes would alter the limitation period', which might change the entire character or nature of the suit, the same having been filed in the year 2013. The primary prayer in the suit is for declaration of title on the basis of a sale deed of the year 1979. The encroachment by defendant in the year 2007 by way of putting up superstructure on the vacant portion of plaintiff's property is complained of. A consequential relief of delivery of vacant possession is sought. On a reading of the plaint, it is apparent that plaintiff could have moved an action for removal

of encroachment and for possession within 12 years thereof. So considered, the reasoning of the Court below becomes erroneous. The amendment having been sought before commencement of trial ought to have been allowed.

The Civil Revision Petition shall stand allowed. The order of learned III Assistant Judge, Civil Civil Court, Chennai, passed in I.A.No.4640 of 2015 in O.S.No.3958 of 2013 on 27.10.2015, shall stand set aside. No costs. Connected miscellaneous petition is closed.

26.07.2016

Index:yes/no
Internet:yes
kkd/gm

To

The III Assistant Judge,
City Civil Court, Chennai.

C.T.SELVAM, J

kkd/gm

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