

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1752 of 2016

&

C.M.P.No.9286 of 2016

1.Kannan

2.Venkatesan

3.Suresh

4.Radha Krishnan

... Petitioners

vs

M.Murugesan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed in I.A.No.979/2014 in O.S.No.263 of 2011 dated 12.01.2016 on the file of learned District Munsiff, Sankari.

For Petitioner : Mr.P.Jagadeesan

ORDER

This revision arises against the order of challenges the order of learned District Munsiff, Sankari, passed in I.A.No.979/2014 in O.S.No.263 of 2011 dated 12.01.2016.

2. Heard the learned counsel for petitioner.

3. O.S.No.263 of 2011 on the file of District Munsif Court, Sankari is the suit filed by the respondent/plaintiff seeking the following reliefs:

a) a decree declaring the plaintiff's right of easement to light, air and access to the plaintiff's terrace house in the 1st item of the suit property through the 2nd item of the suit property lane by way of easement by prescription and thereby interdicting and restraining the defendants, their men, servants and agents by means of a decree of permanent injunction from in any way putting up construction over the 2nd item of the suit property obstructing or preventing the easementary right of light, air and access to the western wall of the suit property and in particular from putting up construction adjoining the western wall of the plaintiff's terrace house in the 1st item of the suit property

b) award costs of the suit and

c) grant such other and further relief or reliefs as this Honourable Court may deem fit and necessary under the circumstances of the case and thus render justice. “

4. Petitioners/defendants and the respondent/plaintiff are adjacent house owners. An advocate commissioner was appointed and his report informed that some windows of the plaintiff's house could not be opened owing to the adjacent construction of the petitioners/defendants. Though the advocate commissioner report was of the date 18.01.2012, the plaintiff moved a petition seeking amendment of the plaint towards including the prayer for mandatory injunction towards dismantling the offending wall. The respondent/plaintiff has alleged that the offending wall was put up during the second week of December 2011. The Court below having allowed the prayer for

amendment, the petitioners/defendants are before this Court by way of this revision.

5. We note that the amendment has been allowed at pre-trial stage. It is the contention of the respondent/plaintiff that the offending wall was put up only in December 2011 whereas, learned counsel for petitioner would submit that the same was put up much earlier and the prayer for mandatory injunction was barred by limitation. The question of limitation generally being a mixed question of law and fact, it is for the rival parties to establish their respective cases in so far as the age of the wall is concerned. For the rest, pre-trial amendments as would enable decision on all disputes between parties generally ought to be allowed. We note that the Court below in allowing the application also directed payment of costs in a sum of Rs.1000/-.

6. In the circumstances, the order of the Court below is a proper one and this Court would not interfere. The Civil Revision Petition is dismissed. No costs. Connected miscellaneous petition is closed.

27.06.2016

Index:yes/no
Internet:yes

C.T.SELVAM, J

kpr

To

The District Munsiff, Sankari.

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