

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1796 of 2016

&

C.M.P.No.9402 of 2016

P.Sethuramakrishnan@Sethu

... Petitioner

vs

1.P.Velusamy

2.V.Sugaaneswaran

3.S.Baby Kala

4.P.Sampooranam

5.S.Venkatesh

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order of the learned Principal District Munsif, Salem passed in I.A.No.544 of 2015 in O.S.No.269 of 2013 on 06.01.2016.

For Petitioners : Mr.S.Gunalan

For Respondents : Mr.T.M.Hariharan

for

Ms.M.Srividhya

ORDER

This revision challenges the order passed by the learned Principal District Munsif, Salem passed in I.A.No.544 of 2015 in O.S.No.269 of 2013 on 06.01.2016.

2. It is the contention of the learned counsel for petitioner/first defendant that at the time of filing the suit, plaintiffs/respondents 1 and 2 herein moved I.A.No.512 of 2013 for appointment of Court Commissioner to inspect the suit properties, measure the same, draw a plan to scale with the assistance of Surveyor with revenue records in the presence of the Village Administrative Officer and to find out the extent of encroachments made by the defendants 1 to 3 in the lands of plaintiffs and the construction put up therein. Trial Court allowed such application on 27.08.2013 and there against the defendants in the suit preferred C.R.P.(PD).No.4210 of 2013, which was allowed under orders dated 20.03.2014. While allowing the revision, this Court observed as follows:

“9. Once the plaintiffs have filed a suit for declaration, recovery of possession and injunction, it is the duty of the plaintiffs to give specific boundary, wherein the defendants made an encroachment. But in the case on hand, the plaintiffs have not mentioned the property specifically in the description of property mentioned in the plaint, wherein the defendants made the encroachment.”

Learned counsel submitted that by way of I.A.No.544 of 2015, the respondents/plaintiffs sought amendment and the Court below erroneously allowed such application on 06.01.2016. The contention of the learned counsel that while allowing the amendment, plaintiff has been permitted to put up no case and inform a different property as the property allegedly encroached and

to further add a prayer for mandatory injunction. Learned counsel submitted that the order under challenge be set aside.

3. We find that both in the original plaint as also in the application for amendment the extent alleged to have been encroached is of 10 cents. By way of amendment, the respondents/plaintiffs has sought to inform in detail the alleged encroachments. In allowing the C.R.P.No.4210 of 2013, this Court had observed that it is the duty of the plaintiffs to give specific boundary, wherein the defendants made an encroachment. The purpose behind the amendment is only to fulfill such requirement and the Court below is right in allowing the same at the pre-trial stage. As a necessary consequence of allowing the amendment of plaint, the petitioner/first defendant would be entitled to file an additional written statement.

Accordingly, the Civil Revision petition is dismissed No costs. Connected miscellaneous petition is closed.

20.06.2016.

Index:yes/no
Internet:yes

C.T.SELVAM, J

To

The Principal District Munsif, Salem

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