

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2693 of 2016 and
CMP.No.13953 of 2016

Kayavizhi

...Petitioner

versus

P.Augustin

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders of the learned District Munsif-cum-Judicial Magistrate, Kattumannarkoil, passed in I.A.No.76 of 2016 in O.S.No.56 of 2007 dated 21.04.2016.

For Petitioner : Mr.R.Balakrishnan

For Respondent : Mr.C.T.Mohan

ORDER

The Civil Revision Petition is directed against the order passed by the learned District Munsif-cum-Judicial Magistrate, Kattumannarkoil, dated 21.04.2016 in I.A.No.76/2016 in O.S.No.56/2007, dismissing the application filed by the petitioner for amendment.

2. The petitioner earlier filed an application for amendment to incorporate a prayer for Mandatory Injunction. The application in I.A.No.24/2016 was dismissed by the learned District Munsif-cum-Judicial Magistrate.

3. The petitioner filed CRP.PD.No.2187/2015 challenging the order dated 17.02.2014 in I.A.No.24/2014 in O.S.No.56/2007. This Court allowed the application and permitted the petitioner to incorporate the plea of Mandatory Injunction. Thereafter, the petitioner filed the application in I.A.No.76/2016 to incorporate paragraph No.3A to the plaint originally filed.

4. According to the petitioner, those amendments are necessary with a view to take up the plea of mandatory injunction. The application was opposed by the respondent by filing counter affidavit. The trial court dismissed the application primarily on the ground of limitation and taking into account the back ground facts relating to the litigation.

5. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

6. The petitioner earlier filed an application in I.A.No.24/2014 for amendment of the plaint. The petitioner wanted to take up a plea of Mandatory Injunction. The trial court dismissed the application. The order was set aside by this Court in CRP.PD.No.2187/2015.

7. The petitioner filed the present application in I.A.No.76/2016 on the ground that for the purpose of Mandatory Injunction, appropriate court fee should be paid before the trial court and the details of valuation should also be amended.

8. I do see force in the submission made by the learned Counsel for the respondent that the petitioner wanted additional materials to be supplied for a decree of Mandatory Injunction. This plea ought to have been taken by the petitioner in I.A.No.24/2014.

9. However, the objection with respect to paragraph 4 absolutely has no basis.

10. The learned Counsel for the respondent has submitted that he has no objection in allowing paragraph 4 so as to enable the petitioner to seek the relief of Mandatory Injunction. I am therefore of

K.K.SASIDHARAN, J.

tsi

the view that the impugned order is liable to be set aside in part.

11. The order passed by the learned Trial court is set aside in part. The amendment sought for in paragraph 3 of the plaint is rejected. The amendment incorporated in paragraph 5 is allowed.

12. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2016

Index:Yes/No

tsi

To

District Munsif-cum-Judicial Magistrate, Kattumannarkoil

C.R.P.(P.D.) No.2693 of 2016

<http://www.judis.nic.in>