

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) Nos.710, 526 and 660 of 2016

&

C.M.P.Nos.3657, 2694 and 3384 of 2016

C.R.P (PD) No.710 of 2016

A.Erali

... Petitioner

vs.

Mrs.Amudah Kandaswamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed in I.A.No.9868 of 2015 (Permission to file additional written statement) in O.S.No.3973 of 2012 dated 12.08.2015 pending on the file of XVIII Assistant Judge, City Civil Court, Chennai.

C.R.P (PD) No.526 of 2016

A.Erali

... Petitioner

vs.

Mrs.Amudah Kandaswamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed in I.A.No.9332 of 2015 (Recall PW1) in O.S.No.3973 of 2012 dated 12.08.2015 pending on the file of

XVIII Assistant Judge, City Civil Court, Chennai.

C.R.P (PD) No.660 of 2016

A.Erali

... Petitioner

vs.

Mrs.Amudah Kandaswamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed in I.A.No.10119 of 2015 (Reopen the evidence of PW1) in O.S.No.3973 of 2012 dated 12.08.2015 pending on the file of XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.M.Abdul Razack

For Respondent : Mr.G.R.M.Palaniappan

COMMON ORDER

The sole defendant in O.S.No.3973 of 2012 pending on the file of XVIII Assistant Judge, City Civil Court, Chennai is the petitioner in all the three Civil Revision Petitions. The respondent in the Civil Revision Petitions is the plaintiff in the above said suit.

2. The suit has been filed for permanent injunction restraining the revision petitioner herein/defendant from in any way effecting alteration, painting, whitewashing or making any change in the plaint schedule properties. The revision petitioner herein/defendant is contesting the suit

after filing a written statement. The written statement was filed in March 2013 itself. The suit is in part-heard stage. Evidence on both sides came to be adduced and the matter stood listed for hearing the arguments on behalf of the defendant after the plaintiff advanced her arguments. At that point of time, the petitioner herein/defendant filed three applications I.A.No.10119 of 2015, I.A.No.9332 of 2015 and I.A.No.9868 of 2015 to reopen the case for further evidence, to recall PW1 for further examination and to permit the petitioner / defendant to file additional written statement.

3. The learned trial Judge, after hearing both sides, by a common order dated 12.08.2015, dismissed all the three Interlocutory Applications holding that the petition seeking permission to file additional written statement was belated and the other two petitions were filed for prolonging the case. As against the said common order and the decretal orders, the present Civil Revision Petitions have been filed.

4. The respondent has already entered appearance through a counsel by filing a caveat and Mr.G.R.M.Palaniappan is the counsel appearing for the respondent. Mr.M.Abdul Razack, learned counsel for the petitioner and Mr. G.Rm.Palaniappan, learned counsel for the respondent/caveator submit that the revisions can be disposed of at the stage of admission itself as the issue involved is very simple. Accordingly, the arguments advanced on both sides are heard. The impugned common order and the final orders of the trial Court are perused. The documents produced in the form of typed-set of

papers are also perused.

5. The learned counsel for the petitioner submits that there is a discrepancy in the description of property provided in the plaint schedule and the same was not adverted to by the revision petitioner/defendant earlier; that when the counsel for the defendant prepared notes for argument, the said discrepancy was found out and hence, the filing of the application for re-opening and to seek permission to file additional written statement became necessary. It is also the contention of the learned counsel for the petitioner that the application for recalling PW1 is consequential to the prayers made in other two petitions. In support of his contention, learned counsel for the petitioner draws the attention of the Court to the schedule of properties provided in the schedule. For the purpose of proper understanding, the schedule of properties in the plaint is re-produced hereunder:

"Seven Coconut Trees, four mango and one supputa trees in the house with superstructure and the ground at Plot No.6B bearing Chennai Municipal Corporation Old Door No.20 and New No.45, 48th Street, Ashok Nagar, Chennai – 600 083 comprised in T.S.No.33, Plot No.57, Kodambakkam Village bounded on the
North by : Plot Nos.C 518B, C51C and C519
South by: Plot No.B65C, Chennai Municipal Corporation
Old Door No.21 and New No.45
West by: Plot No.B 65A, Chennai Municipal Corporation
Old Door No.19 and New No.43
South by:48th Street (20 Feet Road) and
Measuring
On the North : 56' - 0" Feet

On the South : 56' – 0" Feet

On the East : 110' – 0' Feet

On the West : 110' - 0' Feet

and in all measuring 2 grounds and 1360 sq.ft with building sending and erected thereon and situate within the Sub-Registration District of Ashok Nagar and Registration District of Chennai Central."

6. Learned counsel for the petitioner submits that the opening sentence of the schedule of properties is capable of misleading that 12 trees alone were made the subject matter of the suit, whereas the injunction was sought for in respect of the land and building and also the trees. A perusal of the same shows that there is such a discrepancy in the schedule of properties and the discrepancy makes the schedule of properties not free from ambiguity. Only under the said circumstances, with a view to bring it to the notice of the Court and to cross-examine PW1 regarding the said discrepancy, the petitioner herein/defendant wanted to file additional written statement and to re-call PW1.

7. Learned counsel for the respondent, after hearing the submissions made by the learned counsel for the petitioner, concedes that the description of property has not been happily worded and that the same needs to be corrected to convey a correct meaning. Learned counsel for the respondent would fairly concede that the Civil Revision Petitions may be allowed and at

the same time, the respondent/plaintiff may be permitted to move an application for amendment of the plaint schedule to remove the discrepancy. In addition, the learned counsel for the respondent also prays that a time may be fixed for the disposal of the suit. The above said submissions made by the learned counsel for the respondent is taken into consideration and recorded. The revision petitioner cannot have any objection for granting such a permission to the plaintiff to correct the mistake and remove the discrepancy in the schedule of properties, which is sought to be highlighted by the revision petitioner by filing an additional written statement.

In view of the above said submissions made on both sides, all the three Civil Revision Petitions are allowed. The final orders (decretal orders) dated 12.08.2015 passed by the trial Court dismissing I.A.No.10119 of 2015, I.A.No.9332 of 2015 and I.A.No.9868 of 2015 are hereby set aside and all the three interlocutory applications are allowed. The respondent/plaintiff is permitted to move an application for amendment of the plaint schedule to remove the ambiguity found therein. Such an application should be filed within a week from today. The additional written statement shall be received and the suit shall be disposed of expeditiously without granting unnecessary adjournments and in any event, on or before the last working day of April 2016. No costs. Consequently, the connected miscellaneous petitions are closed.

03.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

XVIII Assistant Judge
City Civil Court
Chennai

P.R.SHIVAKUMAR.J.,

gpa

C.R.P (PD) Nos.710, 526 and 660 of 2016 &
C.M.P.Nos.3657, 2694 and 3384 of 2016

03.03.2016