

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.11.2016**

CORAM:

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

C.R.P.(P.D.) No.93 of 2016 and
CMP.No.509 of 2016

Kollapuri

...Petitioner

versus

Munusamy

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.10.2015 passed in I.A.No.1118 of 2015 in O.S.NO.135 of 2014 on the file of Additional District Munsif Court, Cheyyar.

For Petitioner : Mr.P.Mani

For Respondent : Mr.V.Umapathy

ORDER

The petitioner filed a suit for a decree restraining the respondent from trespassing into the property and putting up any kind of construction. During the pendency of the suit, the petitioner filed an application in I.A.No.1118 of 2015 invoking Order VI Rule 17 of the Code of Civil Procedure to amend the plaint. The prayer was to add the relief of delivery of possession after removing the construction made by the respondent during the currency of the suit. The application was opposed by the respondent. The learned trial Judge having found that the petitioner instituted several other suits dismissed the application. Feeling aggrieved, the petitioner has come up with this Civil Revision Petition.

2. The learned counsel for the petitioner contended that it was only during the currency of the suit, the respondent put up the building and as such, the prayer to demolish the superstructure was rightly added.

3. The learned counsel for the respondent while justifying the order passed by the Trial Court contended that the construction has already been completed even prior to the institution of the suit. According to the learned counsel, without divulging the correct facts, the petitioner filed a false suit against the respondent. The present attempt is only to drag on the proceedings.

4. The petitioner initially filed the suit for injunction with a specific prayer to restrain the respondent from putting up construction. According to the petitioner, during the currency of the suit, the respondent trespassed into the property and completed the construction. It was only under such circumstances, the petitioner filed the application for amendment of the plaint.

5. The question as to whether the construction was made prior to the institution of the suit or during the pendency of the suit are all issues to be decided by the Trial Court on the basis of evidence.

6. The Trial Court considered the other suits filed by the petitioner and dismissed the application. There is no question of considering the parallel proceedings instituted by the petitioner or the respondent for considering an application filed under Order VI Rule 17 of CPC. Since the petitioner has come up with a specific contention that construction was completed only during the currency of the suit, the Trial Court was not correct in dismissing the application for amendment. I am therefore of the view that the order deserves to be set aside.

7. In the result, the order dated 30 October 2015 is set aside. The application in I.A.No.1118 of 2015 is allowed. It is open to the respondent to file additional written statement. In case, a contention is taken by the respondent with regard to limitation, necessarily, an issue to that effect should be framed by the Trial Court. The learned Trial Judge, is directed to dispose of all the pending suits between the parties as expeditiously as possible.

8. The Civil Revision Petition is disposed of with the above direction. No costs.

04.11.2016

Index : Yes/No
svki

K.K.SASIDHARAN, J.
(svki)

To

The Additional District Munsif Court,
Cheyyar

C.R.P.(P.D.) No.93 of 2016

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