

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

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THE HONOURABLE MR.JUSTICE M. DURAISWAMY

C.R.P.(PD).No.1062 of 2017
and C.M.P.No.5113 of 2017

Kavitha

... Petitioner

Vs.

1.Kalyani @ Rajalakshmi

2.Saravana Muthu

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.01.2017 passed in I.A.No.371 of 2016 in O.S.No.122 of 2008 on the file of the Additional Sub Judge, Pondicherry.

For Petitioner : Mr.T.S.Baskaran

ORDER

Challenging the fair and final order passed in I.A.No.371 of 2016 in O.S.No.122 of 2008 on the file of the Additional Sub Court, Pondicherry, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.122 of 2008 for permanent injunction. The defendants filed their written statement and are contesting the suit.

3.Based on the available pleadings, the trial Court framed issues and posted the matter for trial. Thereafter, the plaintiff filed an application in I.A.No.371 of 2016 under Order 6 Rule 17 of the Code of Civil Procedure to amend the plaint. The application filed by the plaintiff was opposed by the defendants stating that the proposed amendment sought for by the plaintiff is unwarranted for the reason that there is no iota of truth in the proposed amendment. The trial Court, taking into consideration the case of both parties, dismissed the petition finding that the application has been filed after the commencement of the trial.

4.It is pertinent to note that the suit was filed in the year 2008 and the present application was filed by the petitioner seeking for amendment only on 08.11.2016. The trial Court had observed that the trial had commenced on 13.10.1015. However, the learned counsel for the petitioner submitted that the trial had not commenced yet.

5. When the suit is pending from 2008, the reason for filing the application at a belated stage was not properly explained by the plaintiff. That apart, when the petitioner is seeking for the relief of mandatory injunction by way of proposed amendment, the burden is on the plaintiff to prove that the defendants have encroached into the suit property. Even according to the plaintiff, encroachment was after the filing of the Advocate Commissioner's report before the trial Court. Even in that case, the plaintiff could have filed the application immediately thereafter, but the plaintiff waited till 16.11.2016 for filing the application for amendment. The trial Court, taking into consideration all these aspects rightly dismissed the petition.

6. I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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23.03.2017

To

The Additional Sub Judge,

Pondicherry.

M. DURAISWAMY,J.

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