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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. No.3215 of 2007

Karunamurthy

.. Petitioner

Vs

1.M.Shanmugam

2.Vimala

3.M.Saraswathi

4.M.Bhanu

5.Manicka Mudaliar

6.Kuppammal @ Dhanalakshmi

.. Respondents

PRAYER: Petition under Article 227 of the Constitution of India against the fair and final order dated 31.8.2006 made in I.A.No.1465 of 2006 in O.S.No.3603 of 1997 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Ms.Vasudha Thiaragajan

For Respondents : Mr.S.Jaganathan

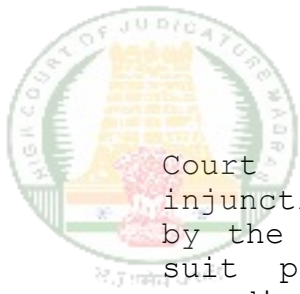
for R1 to R4

ORDER

This Civil Revision Petition is directed against the order dated 31.8.2006 of the VII Assistant Judge, City Civil Court, Chennai passed in I.A.No.1465 of 2006 in O.S.No.3603 of 1997, allowing the petition filed by the respondents under Order 6, Rule 17 of C.P.C.

2. The petitioner is the 1st defendant, the respondents 1 to 4 are plaintiffs and the respondents 5 and 6 are defendants 2 and 3 in the suit. The plaintiffs have filed the suit for declaration to declare that the sale deeds dated 6.6.1985 and 28.6.1996 are null and void and not binding on the plaintiffs and for permanent injunction restraining the 1st defendant, his men and agents from in any manner interfering with the peaceful possession and enjoyment of the suit property. Resisting the suit, the 1st defendant filed the written statement.

3. Pending suit, the plaintiffs have filed I.A.No.1465 of 2006 under Order 6, Rule 17 C.P.C. seeking permission of the



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Court to amend the plaint prayer seeking for mandatory injunction stating that despite an order of status quo granted by the Court, the 1st defendant demolished the building in the suit property and the plaintiffs have filed petition for amending the plaint introducing a prayer for mandatory injunction directing the 1st defendant to re-build the house at his own cost and the said petition was allowed, but the counsel for the plaintiffs has failed to amend the pleadings in the plaint qua demolition of the building by the 1st defendant suitably though the prayer was amended. It is stated that now only the plaintiffs came to know that the prayer has not been suitably amended by the counsel towards the prayer for mandatory injunction. Therefore, the petitioner has filed the petition seeking for amendment.

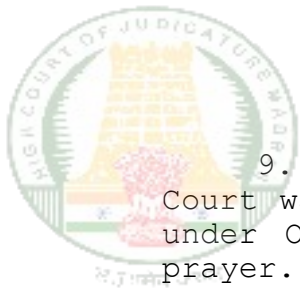
4. Resisting the petition, the 1st defendant filed counter stating that after completing the evidence of plaintiffs' side and when the suit was posted for cross-examination of DW1, the plaintiffs have filed the petition seeking for amendment. Since the petition has been filed belatedly without any good cause or sufficient cause, the same need not be entertained and prayed for dismissal of the same.

5. Upon consideration of the rival submissions, the trial Court, allowed the petition. Aggrieved by the same, the 1st defendant has filed the Civil Revision Petition.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 4 and also perused the materials available on record.

7. The learned counsel for the petitioner submitted that the trial Court ought to have noticed that the suit was filed in the year 1997 and the respondents 1 to 4 should have asked for amendment of the prayer before the commencement of trial and on the contrary, sought amendment of the pleadings after their witnesses were examined in full. She would submit the trial Court erred in allowing the proposed amendment and the order of the trial Court caused grave prejudice to the petitioner and prayed for setting aside the order of the trial Court.

8. Per contra, the learned counsel appearing for the respondents 1 to 4 submitted since the counsel appearing for the respondents 1 to 4 has not suitably amended the plaint, they filed the petition for amendment and the proposed amendment is only a consequential amendment and no prejudice would be caused to the other side for the proposed amendment. He would submit that the trial Court has rightly allowed the petition permitting the respondents 1 to 4 to amend the plaint and there is no perversity in the order of the trial Court.



9. The point arises for consideration is whether the trial Court was right in allowing the petition filed by the petitioner under Order 6, Rule 17 C.P.C. seeking amendment of the plaint prayer.

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10. On a perusal of the typed set of papers, it is seen that for amending the plaint prayer for mandatory injunction, the trial Court has already given permission to the plaintiffs to amend the plaint prayer. However, the counsel appearing for the plaintiffs has not suitably amended the prayer for mandatory injunction in the plaint. On further perusal of the typed set of papers, the petitioner has also filed additional written statement after allowing the amendment of the plaint prayer for mandatory injunction.

11. According to the petitioner, since the trial has begun, no amendment of the plaint should be permitted and the trial Court erred in permitting the plaintiffs to amend the prayer and therefore, the same has to be set aside.

12. It appears that the trial Court in its order observed that already amendment of the prayer qua mandatory injunction was permitted by the Court and the proposed amendment is only a consequential amendment and therefore, the proposed amendment would not in any way affect the case of the petitioner. It is the contention of the respondents 1 to 4 that despite the order of status quo, the petitioner had demolished the building in the suit property. Since the said plea has not been specifically denied by the petitioner in his counter filed in I.A.No.1465 of 2006, the trial Court was right in allowing the petition.

13. For the foregoing reasons, this Court is of the view that there is no infirmity in the order of the trial Court and the same is liable to be confirmed.

14. In the result, the Civil Revision Petition is dismissed. The trial Court is directed to frame Issue in respect of the 1st defendant as to whether he has right to construct the new building or not. The trial Court is also directed to dispose of the same within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

vs

Sd/-/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



To

The VII Assistant Judge,
City Civil Court,
Chennai.

+1cc to Mr.S.Jaganathan, Advocate SR.NO.88070
+1cc to MR.R.Thiagarajan, Advocate SR.NO.88216

sm:9.10.2018

C.R.P. No.3215 of 2007