

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2017

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP(PD)No.1458 of 2017

&

CMP.No.6776 of 2017

S.Dave Jeyaselvan
Petitioner

..

..Vs..

M.P.Ponraj
Respondent

..

Prayer:-

Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair order and decreetal order passed in the Amendment application in I.A.No.533 of 2016 in O.S.No.5734/2013 by learned VI Assistant Judge, City Civil Court at Chennai dated 06.02.2017

For Petitioner : Mr.T.C.S.Raja Chockalingam

For Respondent : Mr.M.Kamalanathan

ORDER

This petition is filed to set aside the fair order and decreetal order passed in the Amendment application in I.A.No.533 of 2016 in O.S.No.5734/2013 by learned VI Assistant Judge, City Civil Court at Chennai dated 06.02.2017.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed the suit for permanent injunction restraining the respondent from dispossessing and interfering with his peaceful possession and enjoyment, usage and occupation of the suit schedule property by the respondent and his family members, without following the due process the law. The respondent filed written statement on 25.11.2013 and is contesting the suit.

3. The petitioner has claimed relief of injunction, in respect of entire property measuring 1 ground and 1588 square feet together with building measuring about 4000 Square feet. Subsequently, he filed I.A.No.1983 of 2015 for amendment to restrict his claim with respect first and second floor alone. According to the petitioner, the respondent is residing in the ground floor and petitioner is the permissive occupant of first and second floor and he has put up additional construction by spending considerable amount with the permission of the respondent. The said application in

I.A.No.1983 of 2017 was dismissed on 17.04.2015. The petitioner filed CRP(PD)No.2382 of 2015 before this Court. The said Civil Revision Petition was dismissed by this Court on 26.06.2015. Subsequently, the petitioner filed I.A.No.15685 of 2014 for appointment of Advocate Commissioner. The said application was allowed and the commissioner inspected the suit property and filed his report. After receipt of the said report, the petitioner filed I.A.No.533 of 2016 under Order VI Rule 17 CPC to allow the amendment sought for, to include the petition mentioned properties, incorporating the various amendments sought for in the earlier application which was dismissed and confirmed by this Court in order dated 26.06.2015 in CRP(PD)No.2382 of 2015.

4. According to the petitioner, the second amendment petition is maintainable in view of the report of the Advocate Commissioner and in change in the circumstances. The learned counsel for the petitioner referred to various judgments to substantiate the case of the petitioner that the second application for amendment is maintainable. The Learned Judge erroneously dismissed the application holding that there is no change in circumstances and therefore second application amendment is not maintainable.

5. Heard the learned counsel for the petitioner and respondent and perused the materials available on record.

6. From the materials on record it is seen that this Court, by order dated 26.06.2015 in CRP(PD).No.2382 of 2015 dismissed the Civil Revision Petition on the ground that the case now put up by the petitioner is contrary to the original pleadings and Trial Court dismissed the application, as the petitioner is trying to plead a new case, contrary to the original plaint. This Court held that the petitioner failed to substantiate and establish his case for the proposed amendment by any acceptable evidence. A reading of the averment made in the application in the second application reveals that petitioner is making very same averments and there is no change in the circumstances and as held by this Court in the order dated 26.06.2015 in CRP(PD).No.2382 of 2015, the petitioner is trying to plead a new case contrary to the original plaint. The learned Judge dismissed the application considering all the materials on record and the order of this dated 26.06.2015 in CRP(PD).No.2382 of 2015, by giving cogent and valid reason.

7. The judgments relied on by the learned Counsel for the petitioner to substantiate that second application is maintainable are not applicable to the facts of the present case.

8. In the above circumstances, there is no illegality or irregularity in the order passed by the Trial Court warranting interference by this Court.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. Since the suit is of the year 2013, without expressing any opinion with regard to the merits of the matter, I direct the VI Assistant Judge, City Civil Court, Chennai, to dispose of the suit in O.S.No.5734 of 2013, on merits and in accordance with law, as expeditiously as possible, in any event, not later than six (6) months from the date of receipt of a copy of this order.

15.06.2017

dh/rgr

Index :Yes / No

Speaking Order/Non Speaking Order

V.M.VELUMANI,J

dh/rgr

To
The VI Assistant Judge,
City Civil Court,
Chennai

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