

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2017

CORAM:

The Hon'ble Mr.Justice S.M.Subramaniam

C.R.P.(PD) No.3414 of 2014

and

M.P.No.1 of 2014

V.Balamurugan

...Revision Petitioner

Vs.

1. Pavadai Pillai
2. Rajendran

...Respondents

Civil Revision Petition, filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned Principal District Munsif, Cuddalore, dated 17.07.2014, made in I.A.No.963 of 2013, in O.S.No.728 of 2004.

For Revision Petitioner : Ms.G.Sumitra

for Mr.I.Abrar and Abdullah

ORDER

Challenging the fair and decreetal order passed by the learned Principal District Munsif, Cuddalore, in I.A.No.963 of 2013, in O.S.No.728 of 2004, dated 17.07.2014, the present Civil Revision Petition is filed by the second defendant.

2. The suit in O.S.No.728 of 2004 was filed by the first

respondent/plaintiff, for the relief of declaration of title and permanent injunction. During the pendency of the suit, he filed an Interlocutory Application, in I.A.No.963 of 2013, seeking amendment of the plaint, so as to include the prayer of mandatory injunction, as the defendants have trespassed into his property and put up construction, after the filing of the suit. Opposing the said application, the revision petitioner/second defendant filed a counter affidavit. The trial Court, considering facts and circumstances of the case, found that, during the pendency of the suit, the defendants trespassed into the suit property, and commenced building construction, that necessitated the first respondent/plaintiff to file Application for amendment of the plaint to include the prayer of mandatory injunction, and allowed the Application.

3. Challenging the order passed by the trial Court, the present Civil Revision Petition is filed by the second defendant, by mainly contending that Application for amendment ought not to have been allowed by the trial Court, as there was no construction put up by the defendants, as alleged by the first respondent/plaintiff. and the allegations set out by the first respondent/plaintiff in the Amendment Application are false and incorrect.

4. Heard the learned counsel for the revision petitioner.

5. This Court is of the view that the allegations and the counter allegations made out in the Application for amendment and the counter affidavit need not be considered at this point of time and the parties can prove the same during trial by adducing both oral and documentary evidence, and the merits and demerits of the case need not be considered, especially, in the pre trial amendment Application. Admittedly, the trial has not yet commenced, and the Court below has to be liberal in allowing the pre-trial amendment.

6. That apart, it is for the plaintiff to establish his case before the trial court, and this Court need not express any opinion, regarding the merits and demerits of the case. Hence, the order passed by the trial Court in allowing the amendment Application is in accordance with law and the same does not call for interference.

7. In the result, the Civil Revision Petition is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

09.02.2017

Index : Yes/No

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To The Principal District Munsif, Cuddalore.

S.M.Subramaniam, J.

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