

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.732 of 2017
& CMP.No.3633 of 2017

Ganesan

.. Petitioner

Vs

1. M.Deenadayalan

2. The Commissioner of Corporation,
E.V.R.Salai, Park Town,
Chennai - 3.

.. Respondents

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.2474 of 2016 in O.S.No.5261 of 2013 dated 30.08.2016 on the file of VII Assistant City Civil Court at Chennai.

For Petitioner : Mr.R.Sasikumar
For R1 : Mr.R.Subramani
For R2 : Mrs.R.Arunmozhi

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 30.08.2016 passed in I.A.No.2474 of 2016 in O.S.No.5261 of 2013 on the file of the learned VII Assistant Judge,

City Civil Court at Chennai.

2. The petitioner is the first defendant; the first respondent is the plaintiff and the second respondent is the second defendant in the suit. The first respondent filed the suit in O.S.No.5261 of 2013 before the learned VII Assistant Judge, City Civil Court, Chennai, to direct the second respondent to remove the encroachment made by the petitioner in the lands of the second respondent described as "B" schedule property, and for a permanent injunction restraining the petitioner from putting up any superstructures in the "B" schedule property.

3. According to the first respondent/plaintiff, he is the absolute owner of "A" schedule property derived from his mother and he is residing in the said property by raising superstructures. The adjacent building described as "B" schedule property does not belong to the petitioner and it is the property of the second respondent - Corporation of Chennai. Though the petitioner did not have any interest or title over the said "B" schedule property, raised an unauthorised superstructure on it, owing to which, the walls of the first respondent got damaged and there was no proper ventilation to

his property. Hence, the first respondent seeking a mandatory relief of permanent injunction has filed the suit.

4. The petitioner filed the written statement on 23.01.2014 and denied the allegations made in the plaint. He also submitted that the first respondent has filed an application seeking interim injunction and the same was dismissed. Pending suit, the petitioner filed application in I.A.No.2474 of 2016 in O.S.No.5261 of 2013, seeking permission to file additional written statement and additional documents on the ground that he had handed over all his original documents to his previous counsel, and on his failure to return the same, and his counsel demanding huge fees to return the said documents, the petitioner could not file the said documents along with the written statement in the Court. It is also submitted by the petitioner that since the suit proceedings was adjourned continuously for more than two years and no trial was conducted, the petitioner has changed his counsel, and in order to contest the case with the help of the present counsel, he seeks permission of the trial Court to file additional written statement and additional documents by filing this application.

5. The learned Judge, considering the materials on record and on perusing the original written statement and additional written

statement then filed by the petitioner, has held that in the additional written statement, the petitioner has raised a new plea, which was not pleaded in the original written statement filed by him and more so, the written statement was filed as early as 23.1.2014, and after a lapse of two years, that too the suit is at the stage of marking documents, the petitioner filing of the application in I.A.No.2474 of 2016 seeking permission of the trial Court to file additional written statement and additional documents cannot be entertained, and is liable to be dismissed. Hence, the learned Judge has dismissed the application in I.A.No.2474 of 2016 vide order dated 30.7.2016.

6. Against the said order of dismissal dated 30.7.2016 passed by the learned VII Assistant Judge, City Civil Court, Chennai in, I.A.No.2474 of 2016, the present revision has been filed.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

8. From the materials available on record, it is seen that the petitioner has put up a new case in the additional written statement

that was not pleaded in the original written statement and moreover, the reasons given by the petitioner that his previous counsel failed to defend the case cannot be a reason for filing the additional written statement. It is pertinent to note that the petitioner is not only seeking permission to file additional written statement in the application under Order VIII Rule 9 CPC, but also seeking permission to file additional documents in the same application, which is not maintainable in law. Under the said circumstances, there is no irregularity or infirmity in the order dated 30.8.2016 passed by the learned VII Assistant Judge, City Civil Court, Chennai in I.A.No.2474 of 2016, warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

22.06.2017

ds/rna

To:

The VII Assistant Judge
City Civil Court,
Chennai.

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V.M.VELUMANI,J

ds/rna



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