

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.04.2017
Delivered on : 28.04.2017

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

CRP (PD) No.646 of 2014 and
M.P.No.1 of 2014

1.Harish Barai
2.V.Arun Kumar

...Petitioners

versus

1.Dr.Rajaguru
2.S.Visalatchi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 19.11.2013 passed in I.A.No.125 of 2013 in O.S.No.7506 of 2010 on the file of the learned XVIII Additional City Civil Court, Chennai.

For Petitioners : Mr.Samir S.Shah
for M/s.Shah and Shah

For Respondents : Ms.R.Sripriya
for M/s.V.Raghavachari

ORDER

This Civil Revision Petition is directed against the order dated 19 November, 2013 in I.A.No.125 of 2013, dismissing the application filed

by the petitioners for amendment of the plaint.

2. The petitioners filed the suit in O.S.No.521 of 2010 (re-numbered as O.S.No.7506 of 2010) against the respondents for permanent injunction, restraining them from undertaking or proceeding with any kind of construction activity in the common area. There was a further prayer to direct the respondents by way of mandatory injunction to remove the steel columns and concrete foundation put up by them on the eastern passage of the building at Shanthi Apartments, T.Nagar, Chennai. The suit was contested by the respondents by filing written statement.

3. The petitioners, after filing written statement by the respondents, filed a reply statement on 1 April, 2011 contending that during the currency of the suit, the respondents continued with the construction and erected the lift.

4. The petitioners filed I.A.No.125 of 2013 for amendment of the plaint. The petitioners wanted to incorporate the subsequent events in the plaint. It was only for the said purpose, the application for amendment was filed.

5. The respondents filed a counter affidavit, wherein, it was contended that there is no need for amendment in as much as all the particulars are available on record.

6. The learned Trial Judge dismissed the application with an observation that the petitioners are at liberty to produce oral and documentary evidence to prove their case and there is no need for amendment of the plaint. Feeling aggrieved, the petitioners are before this Court.

7. The learned counsel for the petitioners contended that it was only to bring on record the subsequent events, the petitioners filed the application for amendment. According to the learned counsel, it would not be possible for the petitioners to adduce evidence, without there being a pleading. The Trial Court was therefore not correct in dismissing the application.

8. The learned counsel for the respondents on the other hand contended that the reply statement dated 1 April, 2011 contained all the particulars and more particularly, the alleged subsequent events. According to the learned counsel, there is no need for a further amendment to the plaint in view of the reply statement.

9. The petitioners originally filed the suit for permanent injunction and mandatory injunction. The petitioners made a complaint that the respondents were in the process of putting up construction in the common area of the apartment complex. Since the construction process commenced by then, the relief of mandatory injunction was also claimed in the suit. The respondents appears to have completed the construction during the currency of the suit. It was only in the said circumstances, the petitioners filed the application for amendment.

10. There is no dispute that the petitioners have filed a reply statement on 1 April 2011 taking into account the written statement filed by the respondents on 19 December 2010. Since the erection of lift has already been completed, the petitioners wanted a specific prayer of mandatory injunction. It is worth mentioning here that the earlier prayer was to remove the steel columns and concrete foundation. The

present payer is to remove the illegal construction put up by the respondents on the eastern passage of the building. The petitioners in the affidavit filed in support of the application indicated as to how the respondents managed to erect the lift during the currency of the suit.

11. There is no question of adducing evidence by the petitioners, without there being a factual foundation in the plaint. The learned Trial Judge was therefore not correct in making an observation that there is no need for amendment of the plaint and it would be possible for the petitioners to lead evidence. I am therefore of the view that the impugned order is liable to be set aside.

12. The order dated 19 November, 2013 is set aside. The application in I.A.No.125 of 2013 is allowed. It is needless to point out that reasonable opportunity should be given to the respondents to file additional written statement.

13. In the up shot, I allow the Civil Revision petition. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2017

Index : Yes/No
Speaking/Non-speaking order
svki

K.K.SASIDHARAN.,J.

(svki)

To

The XVIII Additional Judge,
City Civil Court, Chennai.

Order in
CRP (PD) No.646 of 2014

28.04.2017