

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2366 of 2013
& M.P.No.1 of 2013

G.Prithviraj Reddy ... Petitioner

Vs.

M.Kumar .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 15.02.2013 made in I.A.No.1957 of 2012 in O.S.No.780 of 2005 on the file of the Additional District Munsif, Alandur.

For petitioner : Mr.P.Subba Reddy

For Respondent : Mr.R.Balachandran

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 15.02.2013 made in I.A.No.1957 of 2012 in O.S.No.780 of 2005 on the file of the Additional District Munsif, Alandur.

2. The petitioner is plaintiff and respondent is defendant in O.S.No.780 of 2005 on the file of the District Munsif Court, Alandur. The petitioner filed the said suit for declaration with regard to the A Schedule property; possession of B schedule property and for

permanent injunction. The petitioner mentioned the extent of B schedule property as 1125 sq.ft. The petitioner filed application in I.A.No.551 of 2006 for appointment of an Advocate Commissioner to identify the Survey No.23/1-A1 etc., and identify S.No.663/4, 663/5A (part) with assistance of a Government Surveyor. An Advocate Commissioner was appointed. He inspected the property and filed his report in the month of August 2008. In the report, Advocate Commissioner has stated that the respondent has encroached to an extent of 2720 sq.ft as shown in the sketch and application as well as in the surveyor report. The Advocate Commissioner has given the survey number. Based on the report of the Advocate Commissioner, the petitioner filed I.A.No.1957 of 12 for amendment to mention the extent in B schedule property as 2720 sq.ft instead of 1125 sq.ft. The petitioner also sought for correction in survey number in A Schedule property. According to the petitioner, the respondent subsequent to filing of the suit, has encroached further extent of the suit property. His earlier Advocate did not give a copy of the report and sketch filed by the Advocate Commissioner and also the earlier counsel did not take any steps to amend the plaint to include the correct extent in the B Schedule property and correct the survey number in the A Schedule property. Only after engaging present counsel, the petitioner has filed the present application for amendment. Therefore, the delay is neither wilful nor wanton.

3. The respondent filed counter affidavit and opposed the said application on the ground that at the time of filing of the suit itself, the petitioner has stated that the respondent is in possession of 2400 sq.ft and petitioner, by amendment is introducing a new case. The petitioner is blaming the earlier counsel for the delay in filing the application for amendment, which is not a valid ground. The Advocate Commissioner also in the report has stated that the extent of the property in the possession of the respondent is 2400 sq.ft. In the circumstances, only to fill up the lacuna, the petitioner has come out with the present petition, making false allegations on the earlier Advocate and prayed for dismissal.

4. The learned Judge, considering the averments in the affidavit, counter affidavit and materials available on record, partly allowed the application for amendment with regard to the survey number in A Schedule property and dismissed the application with regard to the amendment of extent of the land in the B Schedule property.

5. Against the said order dated 15.02.2013, made in I.A.No.1957 of 2012 in O.S.No.780 of 2005, the present Civil Revision Petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

7. A perusal on the materials available on record shows that the petitioner has stated in the plaint that respondent is in possession of 2400 sq.ft and has encroached 1125 sq.ft. After filing of the suit, the respondent further encroached the property. The petitioner came to know about the further encroachment only after Advocate Commissioner filed his report. On the other hand, the learned counsel for the respondent contended that the petitioner himself stated that the respondent is in possession of 2400 sq.ft at the time of filing of the suit. The Advocate Commissioner has filed the report in the month of August, 2008. The petitioner has come out with the present application for amendment only in the year 2012. The petitioner has explained the delay, that his earlier counsel did not furnish the copy of the report as well as the sketch filed by the Advocate Commissioner. The learned Judge, dismissed the application with regard to the extent of the property in B Schedule property on the ground that the petitioner knew about the encroachment at the time of filing of the suit itself. From the above facts, the reasoning of the learned Judge is not correct. Whether the respondent is in possession of 2720 sq.ft, even before filing of the suit or he encroached further extent than what is stated in the petitioner's plaint

after filing of the suit, can be decided only after appreciating the evidence let in by the parties in the trial. For the above reasons, the impugned order of the learned Judge with regard to the dismissal of the amendment sought for in the B Schedule property is set aside. The application in I.A.No.1957 of 2012 is allowed in entirety.

8. Accordingly, this Civil Revision Petition is allowed and the petitioner is permitted to pay the additional Court fee if any. No costs. Consequently, connected miscellaneous petition is closed. Since the suit is of the year 2005, the learned Additional District Munsif is directed to dispose the suit as expeditiously as possible, in any event, not later than 3 months from the date of receipt of a copy of this order.

Index: Yes/No
gsa

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V.M.VELUMANI, J.

gsa

To

The Additional District Munsif,
Alandur.



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