

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.04.2017**

CORAM:

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

C.R.P.(P.D.) No.2382 of 2013 and
M.P.No.1 of 2013

1.C.Umamurugan
2.R.Muralidharan

...Petitioners

versus

M/s.DXN Herbal Manufacturing (India) Pvt. Ltd.,
Rep. by its Authorised Signatory
Having Office at R.S.No.141/4 and 141/5,
Whirlpool Road, Thiruvandar Koil,
Mannadipet Commune, Pondicherry.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 22.02.2013 in I.A.No.2054 of 2009 in O.S.No.1071 of 2008 on the file of I Additional District Munsif, Puducherry.

For Petitioners : Mr.D.Ravichander

For Respondent : Mr.C.A.Diwakar

ORDER

This Civil Revision Petition is directed against the order dated 22 February, 2013 in I.A.No.2054 of 2009, dismissing the application filed by the petitioners to direct the respondent to pay appropriate Court fee

taking into account the nature of the property.

2. The learned counsel for the petitioners contended that the plaint filed by the respondent clearly shows that construction was made in the entire property and it was not restricted to a particular item. According to the learned counsel, in view of the categorical assertion made by the respondent in the plaint and more particularly, in Paragraph 1, the Trial Court was not correct in dismissing the application filed under Section 11(2) of the Pondicherry Court Fees and Suit Valuation Act, 1972 and Order 14(2)(a) r/w Section 151 of the Code of Civil Procedure.

3. The learned counsel for the respondent on the other hand submitted that construction was in another property and it has nothing to do with the suit property. According to the learned counsel, the learned Trial Judge was perfectly correct in dismissing the application filed by the petitioners.

4. The respondent filed the suit for declaration, mandatory injunction and permanent injunction against the petitioners in respect of the property in R.S.No.143/8A corresponding to Cadastre No.75 pt, Mannadipet Commune Panchayat. Before the Trial Court, the

petitioners filed an application in I.A.No.2054 of 2009 to decide the valuation of the property for the purpose of Court Fee and jurisdiction. The Trial Court accepted the explanation submitted by the respondent that there was no such construction in the subject property and rejected the application.

5. In case, the plaint filed by the respondent is read in its entirety, it would appear as if construction was confined to a particular property. The plaint proceeds as if construction was made in the properties purchased by the respondent including the property in R.S.No.143/8A. This aspect was not considered by the learned Trial Judge. I am therefore of the view that the issue requires fresh consideration by the learned I Additional District Munsif, Puducherry.

6. In the result, the order dated 22 February, 2013 is set aside. The application in I.A.No.2054 of 2009 is restored to file.

7. The respondent is given liberty to file a fresh affidavit in response to the affidavit filed by the petitioners in I.A.No.2054 of 2009 indicating the correct factual position. It is open to the petitioners to file their response taking into account the additional affidavit filed by the

respondent.

K.K.SASIDHARAN, J.

(svki)

8. The learned I Additional District Munsif, Puducherry, is directed to consider the matter afresh and pass an order on merits and as per law. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

9. The Civil Revision Petition is allowed to the extend indicated above. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2017

Index:Yes/No
svki

To

The I Additional District Munsif, Puducherry.

C.R.P.(P.D.) No.2382 of 2013