

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.06.2017**

CORAM:

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

C.R.P.(P.D).No.3069 of 2013 and
M.P.No.1 of 2013

P.Subramaniam

...Petitioner

Vs

S.Subramaniam

...Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the orders of the learned District Munsif, Tiruppur, dated 27.03.2013 in I.A.No.103 of 2012 in O.S.No.422 of 2011 and allow the above C.R.P.

For Petitioner : Mr.K.Karthick Asath

For Respondent : No appearance

ORDER

This civil revision petition is directed against the order dated 27 March 2013 in I.A.No.103 of 2012, dismissing the application filed by the petitioner for amendment of the plaint.

2. Heard the learned counsel for the petitioner. I have also heard the learned counsel for the respondent.

3. The petitioner filed a suit for mandatory injunction stating that the cause of action has arisen on 10 December 2011. Subsequently, the petitioner filed an application in I.A.No.103 of 2012 contending that the material date was wrongly typed as 10 December 2011 instead of 10 October 2011. The learned District Munsif , Tirupur, taking into account the objection raised by the respondent dismissed the application. The order is under challenge in this Civil Revision Petition.

4. The application filed by the petitioner for amendment was opposed by the respondent primarily on the ground that only after appointing Advocate Commissioner, the application was filed. In short, it was the contention of the respondent that it was only to avoid certain observations made by the commissioner with respect to the factual position of the property, the application was filed.

5. There is no substance in the contention taken by the respondent with regard to the bonafides in filing the application for amendment for the simple reason that even before filing the application

for commission, the petitioner filed an application for amendment. It is also a matter of record that the commissioner inspected the property only on 23 January 2012. The application was filed on 5 January 2012. Therefore, I am of the view that respondent was not correct in contending that only for the purpose of avoiding a statement with regard to the factual position, the petitioner filed the application for amendment. This aspect was not considered by the learned Trial Judge. I am therefore of the view that the impugned order is liable to be set aside.

6. In the result, the order dated 27 March 2013 is set aside. The application in I.A.No.103 of 2012 is allowed.

7. The respondent is given liberty to file additional written statement taking into account the amendment made to the plaint.

8. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2016

dna/svki

K.K.SASIDHARAN,J.

dna

To

The District Munsif Court, Tiruppur,

C.R.P.(P.D.) No.3069 of 2013

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