

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2817 of 2012

M.P.No.1 of 2012

Krishnamoorthy

.. Petitioner

Vs.

1. Shanmugham

2. Dhanalakshmi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 26.03.2012 made in I.A.No.115 of 2012 in O.S.No.161 of 2007 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner : Mr.R.Meenal

For Respondents : Mr.R.Gururaj

ORDER

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This Civil Revision Petition has been filed against the fair and decreetal order dated 26.03.2012 made in I.A.No.115 of 2012 in O.S.No.161 of 2007 on the file of the Principal District Munsif Court, Cuddalore.

2. Petitioner is the plaintiff, respondents are the defendants in O.S.No.161 of 2007 on the file of the Principal District Munsif Court, Cuddalore. The petitioner filed the said suit for permanent injunction, restraining the respondents from putting up any kind of new construction in the suit property and also restraining them from cutting the live trees in the suit property. The petitioner had also filed an Interlocutory application in I.A.No.557 of 2007 for temporary injunction against the respondents. In the said application, by the order dated 15.07.2017, an interim injunction was granted.

3. According to the petitioner, the respondents violated the order of interim injunction dated 15.07.2017, by encroaching upon some three feet breadth on the northern side of the suit property for constructing a new compound wall. The petitioner had filed I.A.No.1106 of 2008 for punishing the respondents, stating that the respondents have violated the order of interim injunction. The said application was dismissed for default. Subsequently, the respondents put up a sewerage tank on 04.02.2012, in the suit property on the south of the newly constructed compound wall. If

the said sewerage tank is constructed, it will obstruct the pathway and there will be water leakage in the pathway, which will affect the health of the surrounding people. In these circumstances, the petitioner filed I.A.No.115 of 2012 for amendment to include the prayer of mandatory injunction, directing the respondents to remove the newly constructed compound wall with two grill gate and sewerage tank from the suit property.

4. The first respondent filed counter affidavit, which was adopted by the 2nd respondent and submitted that they have not encroached or put up any new compound wall. The old compound wall was damaged and the same was renovated.

5. According to the petitioner, the compound wall and sewerage tank was constructed in the year 2008 and petitioner filed application for amendment only in the year 2012 and claim of the petitioner is barred by limitation.

6. The learned Judge, considering the averments in the affidavit, counter affidavit, dismissed the application, holding that the application filed by the petitioner is barred by limitation.

7. Against that order dated 26.03.2012, made in I.A.No.115 of 2012 in O.S.No.161 of 2007, the present civil revision petition is filed by the petitioner.

8. Heard the learned counsels appearing for both sides and perused the materials on record.

9. On perusing the materials, it is seen that the petitioner admitted that compound wall was constructed by the respondents in the year 2008 and petitioner initiated contempt proceedings in I.A.No.1106 of 2008 for punishing the petitioner. But, subsequently, did not pursue the same and the same was dismissed for default. The present application was filed in the year 2012 for amendment. This application was filed after a lapse of four years from the date of the alleged encroachment.

10. The learned Judge, considering this aspect, stated that if the amendment is allowed, it will take away the legal right accrued to the respondents and that the amendment now sought for to include the decree of mandatory injunction is itself barred by

limitation, dismissed the application by giving cogent and valid reason. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 26.03.2012.

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

21.07.2017

gsa
Index: Yes/No
Internet: Yes/No

To

The Principal District Munsif Court, Cuddalore.

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V.M.VELUMANI, J.

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