

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4473 to 4476 of 2010
& M.P.No.1 of 2010

1.Doss
2.Malliga
3.Arokiasamy

.. Petitioners in all
the CRPs.

Vs.

1.Vamanan
2.Gurunathan
3.Ganesan

.. Respondents in
all the CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.08.2009 passed in I.A.Nos.2416 to 2419 of 2005 in O.S.No.525 of 2005 on the file of the District Munsif Court, Alandur.

For Petitioners : Mr.L.Dhamodaran

For R1 & R2 : V.Kannan

For R3 : Given up

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 24.08.2009 passed in I.A.Nos.2416 to 2419 of 2005 in O.S.No.525 of 2005 on the file of the District Munsif Court, Alandur.

2. The petitioners in all the four civil revision petitions are the defendants 1 to 3, respondents 1 & 2 are the plaintiffs and third respondent is the fourth defendant in O.S.No.525 of 2005 on the file of the District Munsif Court, Alandur. The respondents 1 & 2 have filed suit claiming damages from the petitioners for demolition of the building owned by the respondents 1 & 2 and for permanent injunction restraining the petitioners from interfering with the suit schedule property.

3. The respondents 1 & 2 filed four applications in I.A.Nos.2416 to 2419 of 2005; I.A.No.2416 of 2005 for amendment of the survey number in the suit schedule as S.No.510/14 instead of S.No.150/14 in I.A.No.2195 of 2005; I.A.No.2417 of 2005 to amend the pleadings in plaint; I.A.No.2418 of 2005 to permit the petitioner to amend the schedule of property

portion in I.A.No.2194 of 2004 the application for ad interim injunction; I.A.No.2419 of 2005 for amendment of the pleadings in the plaint in O.S.No.525 of 2005 and to include the prayer for mandatory injunction to remove the construction put up by the petitioners.

4. According to the respondents 1 & 2, by mistake, survey number has been wrongly typed as S.No.150/14 instead of S.No.510/14. The boundaries and linear measurements are to be included in the schedule of property. Earlier, the respondents 1 & 2 have filed O.S.No.2077 of 1997 against the petitioners 1 & 2 for delivery of vacant possession and to pay damages and the said suit was decreed on 30.11.2000. The petitioners during pendency of this suit in violation of decree passed in O.S.No.2077 of 1997 have put up super structure. Therefore, they prayed for amendment of the plaint as stated above.

5. The petitioners filed counter affidavits, denied all the averments made in the affidavit and submitted that the properties in O.S.No.2077 of 1997 and in the present suit are different from the property of the petitioners. The respondents 1 & 2 were not

aware of the boundaries and extent of the land. The respondents 1 & 2 filed the above said applications only when they received notice in O.S.No.521 of 2005, which was filed by the third petitioner. By allowing the amendment, entire value of the suit will be changed and the respondents 1 & 2 are introducing a new case and prayed for dismissal of the applications.

6. Before the learned Judge, no oral evidence was let in by both the parties. The respondents 1 & 2 marked one document as Ex.P1 and the petitioners marked two documents as Exs.R1 and R2.

7. The learned Judge considering the averments made in the affidavit, counter affidavit, documents and judgements relied on by the parties, allowed all the four applications.

8. Against the order dated 24.08.2009 passed in I.A.Nos.2416 to 2419 of 2005, the present four civil revision petitions are filed by the petitioners/defendants 1 to 3.

9. The learned counsel for the petitioners reiterated the averments made in the counter affidavit filed in support of the four applications and submitted that the learned Judge has not followed

the guidelines issued by the Hon'ble Apex Court for allowing the applications for amendment and by amendment, the respondents 1 & 2 are introducing a new case. In support of his contention, he relied on the judgement reported in **(2009) 10 Supreme Court Cases 84 (Revajeetu builders and developers v. Narayanasamy and sons and others)**, para-63 is extracted hereunder:

"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is bonafide or malafide;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the Court should decline

amendments if a fresh suit on the amended claims would be barred by limitation on the date of application."

10. The learned counsel appearing for the respondents 1 & 2 submitted that the respondents 1 & 2 by inadvertence typed survey number as 150/14 instead of 510/14. The respondents have filed all the documents with linear measurements and with extent of the property in S.No.510/14 in O.S.No.2077 of 1997. The learned Judge rightly held that if prayer for mandatory injunction is added, no prejudice would be caused to the petitioners/defendants. In support of his contention, he relied on the judgment reported in **A.I.R. 2011 Madras 177 (Shanmugam v. Hema)**, wherein it has been held as follows:

"11. At this juncture, I would like to recollect and call-up the following maxim-

"id certum est quod certum reddi potest - That is certain which can be made certain".

Here even though the boundaries may not have been properly specified yet the door number of the structure has been specified clearly and by that the defendant could have very well understood that the plaintiff sought for eviction only from the said structure concerned. As such, I am of the view that both the Courts were right in construing that

the termination notice was valid and it was not bad for want of proper description of the suit property."

11. Heard the learned counsel appearing for the petitioners and respondents 1 & 2 and perused the materials available on record.

12. From the materials available on record, it is seen that the respondents 1 & 2 have given survey number in the schedule of property as 150/14 instead of 510/14. The respondents 1 & 2 have marked Ex.P1/xerox copy of the assignment order dated 21.06.1974 and the petitioners have marked Ex.R1 certified copy of the sale deed dated 27.12.1986 & Ex.R2/certified copy of decree passed in O.S.No.2077 of 1997, dated 30.11.2000. Ex.P1 Xerox copy of the assignment order dated 21.06.1974 shows that the survey number is 510/14. The petitioners have made objections to the same on the ground that the suit property in S.No.510/14 does not belong to the respondents 1 & 2.

13. The learned Judge held that whether Ex.P1/assignment order dated 21.06.1974 relates to the respondents 1 & 2 or not and

whether the petitioners are owner of the land in S.No.510/14 can be decided at the conclusion of trial. As far as mandatory injunction is concerned, the respondents 1 & 2 have taken a stand that the petitioners have put up construction pending suit. In view of the same, it is for the respondents 1 & 2 to prove that the petitioners put up construction pending suit and the said construction must be removed. For the above reason, the amendment to include the relief for mandatory injunction is necessary to decide the issue in the present suit. The contention of learned counsel for respondents 1 and 2 that by inadvertence, the survey number has been typed as 150/14 instead of 510/14 is acceptable, as the same could have easily crept in while typing.

14. The learned Judge considering all the materials available on record, documents and judgements relied on by the parties, rightly allowed the four applications by giving cogent and valid reasons. There is no irregularity or illegality warranting interference by this Court with the order of the learned trial Judge, dated 24.08.2009.

15. In the result, these Civil Revision Petitions are dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

22.08.2017

Index : Yes/No
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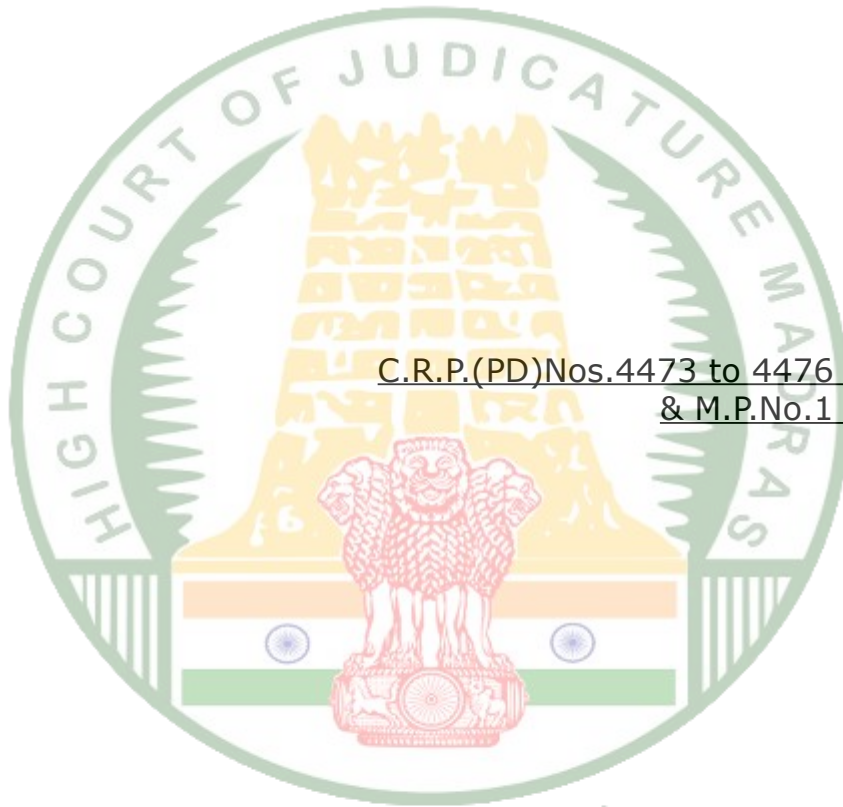
The District Munsif, Alandur.



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V.M.VELUMANI, J.

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