

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.P.D.No.1311 of 2018
and CMP.No.6803 of 2018

K.Parameswaran .. Petitioner

Vs

D.Tamilselvan .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 12.12.2017 made in I.A.No.9643 of 2017 in O.S.No.1720 of 2017 on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : M/s.B.R.Shankaralingam

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 12.12.2017 passed in I.A.No.9643 of 2017 in O.S.No.1720 of 2017 on the file of the XV Assistant Judge, City Civil Court, Chennai.

2. The defendant in O.S.No.1720 of 2017 on the file of the XV Assistant Judge, City Civil Court, Chennai, is the revision petitioner herein.

3. According to the petitioner, the respondent had filed a suit in O.S.No.1720 of 2017 seeking mandatory injunction and consequential relief of permanent injunction. In the aforesaid suit, the petitioner has filed an application in I.A.No.9643 of 2017 to reject the plaint. The trial Court had dismissed the application on the ground that the suit is barred by limitation. Aggrieved by the said order, the petitioner has filed the present civil revision petition before this Court.

4. The counsel for the petitioner would contend that the respondent himself had purchased the property only in the year 2000 as a Madras terrace building, subsequently, he could have demolished and constructed the building. Admittedly, the petitioner has stated that the building is new and it is not an old building. At the time of purchase by the plaintiff, there was already a superstructure in the ground floor and the plaintiff without demolishing the existing superstructure, strengthened it by raising constructions on the first floor and the plaintiff has not complied with the ingredients of Section 15 of Indian Easement Act and the respondent ought to have enjoyed the property for more than 22 years. Thus the suit is not maintainable. Since, the respondent had purchased the suit property only in the year 2002 and twenty years have not been completed for the said building. The suit is barred by law. Therefore, the suit is not maintainable and the

impugned order is liable to be rejected. The learned Trial Judge, who failed to consider the facts of the case and also to look into the legal provisions and due to his non-application of mind, had dismissed the application.

5. I have carefully considered the materials placed before this Court and heard the arguments advanced by the learned counsel for the petitioner and also perused the order passed by the trial court.

6. It is not in dispute that the respondent purchased the property only in the year 2000 as a Madras terrace building. The counsel for the petitioner admitted the fact that the suit property is not a vacant site but even at the time of purchase it is a Madras terrace building. Therefore, the building existed in the suit property was Madras terrace type building with country tiles. It is also not in dispute that the petitioner is not able to say that when the terrace building was constructed. The aforesaid fact is a triable issue and the same can be decided on merits in the suit only after trial and not at this stage. Therefore, the question of limitation for filing the suit is only a mixed question of fact and law can be decided after the trial by adducing oral and documentary evidence.

P.VELMURUGAN,J.

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7.Further, it is well settled proposition of law that at the time of deciding any application under Order VII Rule 11 of CPC, this court has to look into and consider the averments made in the plaint and the documents annexed with the plaint and not the defence taken by the defendant in the written statement and his documents. Therefore, this Court finds no illegality or infirmity in the order passed by the trial Court and hence, the same is liable to be confirmed.

8. Considering the facts and circumstances of the case, the impugned order passed in I.A.No.9643 of 2017 in O.S.No.1720 of 2017 on the file of the XV Assistant Judge, City Civil Court Chennai dated 12.12.2017 is hereby confirmed. Hence, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2018

Index : Yes/No
 Internet : Yes/No
 Speaking : Non speaking Order
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 To
 The XV Assistant Judge,
 City Civil Court, Chennai.

C.R.P(PD)No.1311 of 2018
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