

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P.(PD)No.3317 of 2017 and
C.M.P.No.15490 of 2017

M.S. Thomas Muthukumar ... Petitioner/ Petitioner/Plaintiff

Vs.

1. G. Ravi ... 1st Respondent/1st Respondent/Defendant
2. The Assistant Commissioner,
Corporation of Chennai,
Zone-14, Ullagaram,
Chennai-600 091. ... 2nd Respondent/2st Respondent/Defendant
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Building,
Egmore, Chennai - 600 008.
... 3rd Respondent/ 3rd Respondent/Defendant

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, against and decreetal order in I.A.No.1519 of 2016 in O.S.No.236 of 2015, dated 04.08.2017 on the file of the Additional District Munsif, Alandur and to set aside the same.

For Petitioner : Mr.P.Ebeneser Paul

For Respondent-2 : Mrs.R.Arunmozhi, Standing Counsel

For Respondent-3 : Mr.C.Johnson

For Respondent-1 : No Appearance

O R D E R

The petitioner's application filed under Order VI Rule 17 of Civil Procedure Code has been rejected on the ground that the suit is ripe for trial and by allowing the amendment, a new cause of action would be introduced.

2. Heard Mr.P.Ebeneser Paul, learned counsel for the petitioner as well as Mrs.R.Arunmozhi, learned senior counsel for the second respondent and Mr.C.Johnson, learned counsel for the third respondent. Though notice has been served on the first respondent and his name was printed in the cause list, none appeared on behalf of the first respondent/first defendant.

3. In the original plaint, the petitioner herein had specifically pleaded that the suit property is 30 feet on the North and South above 9 meters, which requires provision of set back on all four sides as per the Development Country Rules. It is the case of the petitioner that the first defendant is trying to encroach upon the plaintiff's passage land and in view of his resistance, the suit has been filed. The amendment which is now sought for is to replace the portion of the prayer of leaving 5 feet rear set back on all four sides of the "C" schedule property. Since the grievance of the petitioner has already been spelt out in the plaint averments, the present amendment which is sought for, may not change the cause of action or introduce a new cause of action. Though the suit is ripe for trial, in my view unless the amendment is permitted, serious prejudice could be caused to the petitioner/plaintiff and the entire exercise of filing the suit may become futile. In view of the same and in the interest of justice, it would be appropriate to permit the petitioner to amend the plaint prayer as sought for.

4. In the light of the above observations, the order in I.A.No.1519 of 2016 in O.S.No.236 of 2015, dated 04.08.2017 passed by the learned Additional District Munsif, Alandur is set aside. Consequently, the learned Additional District Munsif, Alandur, is called upon to take up the application in I.A.No.1519 of 2016 in O.S.No.236 of 2015, dated 04.08.2017 and pass appropriate orders by allowing the application and in the light of the above observations, such an exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

5. With the above observations, the Civil Revision Petition stands allowed. No costs. Consequently, connected

Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

msm

To

1. The Additional District Munsif,
Alandur, Chennai.
2. The Assistant Commissioner,
Corporation of Chennai,
Zone-14, Ullagaram,
Chennai-600 091.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Building,
Egmore, Chennai - 600 008.

+1cc to Mr.R.Arunmozhi, Advocate SR.No.59447

+1cc to Mr.P.Ebenezer Paul, Advocate SR.No.58891

GMV (24/09/2018)

C.R.P. (PD) No.3317 of 2017

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