

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P(PD).No.3459 of 2007

and

M.P. No.1 of 2007

and

M.P. No. 1 of 2014

Mr.Sreenivasa Naicker

...Petitioner

\Vs\

1.Mr.Pavunni

2.Mr.Jacob

3.Rev.Sister Bupert

4.Udaya C.M.C.Educational Trust

rep. by its Trustees Sister Osmund,

Sister Resiliuse

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 08.03.2007 passed in I.A. No.1102 of 2006 in O.S. No.162 of 1996 on the file of District Munsif cum Judicial Magistrate, Ambattur.

For Petitioner

:

Mr.V.Ramesh

For Respondents 3 & 4

:

No appearance

ORDER

The plaintiff is the Revision Petitioner before this Court. The Civil Revision Petition is filed challenging the order of the learned District Munsif cum Judicial Magistrate, Ambattur in rejecting the application filed by the petitioner herein, for amending the plaint and including the relief of mandatory injunction in I.A. No.1102 of 2006 in O.S. No.162 of 1996.

2. The revision petitioner had filed the suit in O.S. No.1608 of 1992 on the file of Munsif Court, Poonamallee seeking the following reliefs.

“ a. declaring that the plaintiff is entitled to right of passage from the A schedule land through the B schedule property to reach the north to sough branching off road from Mitnamelli Melapedu Road, consequentially permanently restraining the defendants, their men, agents, servants or anyone on their behalf from obstructing such user by trying to put up compound wall on the northern and eastern limits of the B schedule property or in any other manner.

b. permanently restraining the defendants their men agents and servants from interfering with the plaintiff's possession and enjoyment of the A schedule property by trying to encroach beyond the age old line fence demarcation in the west or otherwise.”

In the plaint the revision petitioner has alleged that the defendants/respondents herein, are attempting to construct a compound wall in the B schedule property.

3. Along with the plaint, the plaintiff/revision petitioner had filed an applications in I.A. No.2633 of 1992 and I.A. No.2634 of 1992, which were taken on file. In I.A. No.2635 of 1992 the plaintiff had sought for an appointment of Advocate Commissioner to inspect the suit property and note down the physical features. The said application was allowed on 25.08.1992 and the Advocate Commissioner had visited the premises on 27.08.1992 and observed the following.

“a) There was clear indication of the B schedule having been a passage;

b) The defendants had put a wall hurriedly in which even the mortar was wet and the wall was not plastered.

c) A number of workers were at work even during his visit

d) On the western side of the A schedule land pit for foundation of 1 ½ feet depth was dug only upto about 12 feet from the southern end.

e) the row of live trees in a curved line forming the natural fence on the western limit of A schedule were cut and the stems alone were there.”

4. Thereafter, since the defendants/respondents have chosen to proceed with the construction of a compound wall, the plaintiff/revision petitioner had taken out another application in I.A. No.2939 of 1992 for appointment of the same Advocate Commissioner to inspect the property note down the physical features and file his report. The Advocate Commissioner inspected the property on 29.10.1992 and filed his second report wherein, he had clearly stated that the defendants/respondents had put up a compound wall pending the suit in a straight line. The defendants/respondents who had put up a compound wall in a hurry earlier had reconstructed the same with a pucca compound wall.

5. It appears that the plaintiff/revision petitioner had immediately filed an application in I.A. No.2938 of 1992 seeking for issue of a mandatory injunction directing the defendants to remove the compound walls. However, on advise this petition was withdrawn with a liberty to file necessary application to amend the plaint. Subsequently, the said application was also closed.

6. Meanwhile, it appears that the suit O.S. No.1608 of 1992 was transferred from the District Munsif Court, Poonamalle to the file of the District Munsif cum Judicial Magistrate, Ambattur and renumbered as O.S. No.162 of 1996. However, the revision petitioner did not have knowledge of the same, since he did not receive notice either from the transferor or transferee Court. Further owing to his ill health, he was also unable to get in touch with his Counsel. It appears that after the transfer of the suit to the learned District Munsif cum Judicial Magistrate, Ambattur, the suit was dismissed for default. The revision petitioner had taken out an application in I.A. No.888 of 1999 for restoring the said suit which was dismissed by the learned District Munsif

cum Judicial Magistrate, Ambattur. This order was challenged before this Court in CRP No.3867 of 2001, which also ended in a dismissal. Thereupon, the petitioner had taken up the matter to the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to restore the suit.

7. On the suit being restored to file, the petitioner had come forward with the present petition to amend the plaint. In the affidavit filed in support of the amendment petition to amend the plaint, the revision petitioner had set out in detail reasons for the delay in filing the petition as also the reasons for the amendment. The first respondent had filed a counter which was adopted by the other respondents in which the respondents had countered the petition only on the grounds of delay and on the ground that it introduced a new cause of action.

8. The learned District Munsif proceeded to dismiss the amendment petition on the ground that the petition was highly belated and the petitioner had not substantiated his claim for an amendment.

9. This Court has perused the pleadings including the affidavit and counter filed in I.A. No.1102 of 2006. It is seen that the revision petitioner has filed a suit for declaration declaring that he is entitled to right of passage from the A schedule property through the B schedule property to Mitnamelli Melapedu road. The pleadings would also reflect the fact that the defendants were attempting to put up a compound wall. The Advocate Commissioner's report would clarify the fact that pending the proceedings, the defendants had proceeded to put up the compound wall thereby effectively rendering the relief infructuous. The petitioner has clearly explained the reasons for the delay in taking out the application which reasons are beyond his control. That apart, the trial in the above suit is yet to commence. The relief that is sought for in the amendment petition does not in any manner introduce a new cause of action but only fortifies the stand taken by the revision petitioner in his original plaint. No prejudice whatsoever will be caused to the respondents, if the amendment is allowed. Consequently, the Civil Revision Petition is allowed.

10. Considering the fact that the suit was originally of the year 1992, this Court feels it is necessary to issue directions to the learned District Munsif cum Judicial Magistrate, Ambattur to expedite the trial after the competition of the pleadings pursuant to the amendment being carried out.

11. In the result, the Civil Revision Petition is allowed. No order as to Costs.

22.06.2018

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
rkp

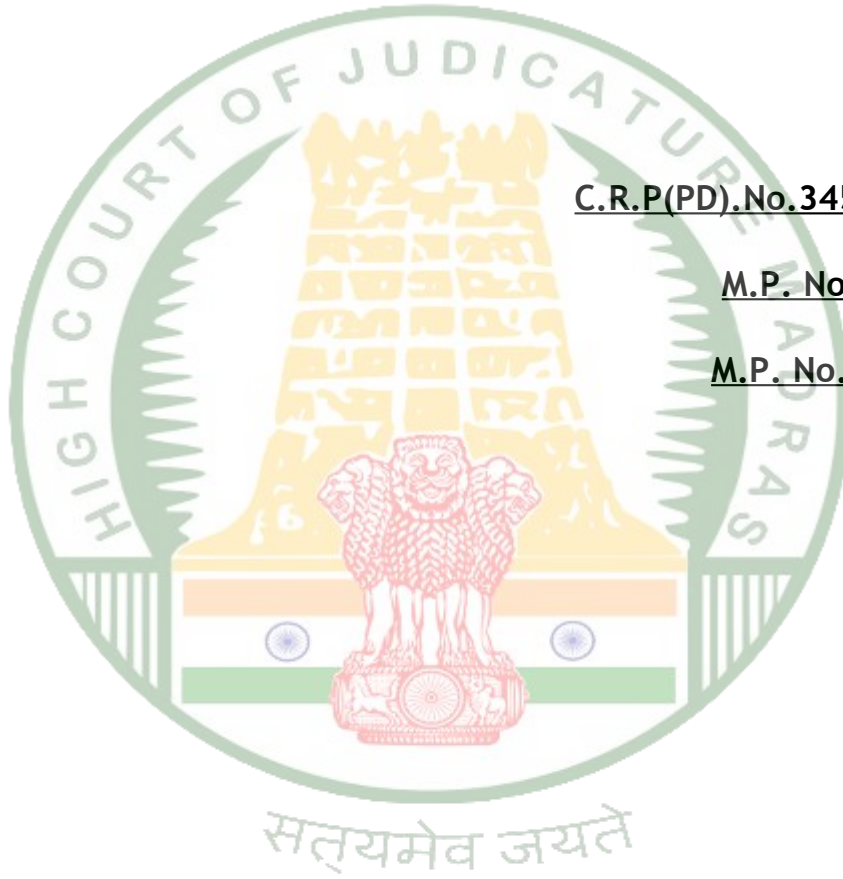
To

The District Munsif cum Judicial Magistrate,
Ambattur

WEB COPY

P.T.ASHA.J,

rkp



C.R.P(PD).No.3459 of 2007
and
M.P. No.1 of 2007
and
M.P. No. 1 of 2014

WEB COPY

22.06.2018