



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2018
(Reserved on 13.02.2018)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD)No.2129 of 2017 and
CMP(MD)No.10563 of 2017

1)Manikandan
2)Beaula

... Petitioners

vs.

Santha

... Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the learned Principal District Munsif, Kuzhithurai, dated 20.04.2017 in I.A.No.137 of 2017 in O.S.No.43 of 2015.

For Petitioners : Mr.N.Dilip Kumar
For Respondent : Mr.C.Godwin

ORDER

This revision petition has been filed against the fair and decreetal order passed by the learned Principal District Munsif, Kuzhithurai, dated 20.04.2017 in I.A.No.137 of 2017 in O.S.No.43 of 2015.

2.Learned counsel for the petitioners would submit that the revision petitioners are plaintiffs and respondent is defendant. The plaintiffs filed O.S.No.43 of 2015 on the file of the Principal District Munsif, Kuzhithurai, for declaration of easement right and permanent injunction. Pending suit, they filed the present amendment application in I.A.No.137 of 2017, contending that subsequent to the suit, the defendant has closed the pathway and therefore, it is necessary to amend the prayer in the suit by including the relief of mandatory injunction directing the defendant to remove the obstruction made in the B schedule property.

3.Learned counsel for the respondent would submit that earlier, the petitioners filed similar application in I.A.No.295/16 and the same was dismissed with liberty to file fresh application with correct description. However, without complying with the said direction, the petitioners have filed the present amendment application without any specific description showing obstruction and therefore, it is submitted that there is no cause of action for seeking the relief of mandatory injunction.



4. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

5. Perusal of the impugned order shows that the petitioners earlier filed I.A.No.295/16 for similar relief of amendment contending that subsequent to the suit, the respondent/defendant has blocked the pathway. The said application was dismissed on 24.08.2016 with liberty to file fresh application after furnishing specific description showing the nature of amendment, its width and length as separate schedule. However, it is stated that the petitioners have filed the present application without complying with the direction given by the Court below in I.A.No.295/16 and without any particulars regarding the nature of obstruction and specific description of obstruction, and therefore, the Court below dismissed the amendment petition holding that even if the present petition for amendment is allowed, no purpose would be served and the real controversy between the parties could not be adjudicated properly.

6. The only ground on which the Court below has rejected the said application is that no proper description mentioned in respect of the 'B' schedule property. Without proper description, as rightly stated by the Court below, the issue cannot be adjudicated and the relief sought for by the petitioner cannot be granted. I am of the considered opinion that no prejudice will be caused to the respondent, if this revision petition is allowed and the petitioner is permitted to file an additional affidavit with the proper description as directed by the learned Judge in I.A.No.295/2016. Considering the nature of the case, I am inclined to interfere with the order passed by the learned Judge.

7. Accordingly, the impugned order passed by the learned Principal District Munsif, Kuzhithurai, dated 20.04.2017 in I.A.No.137 of 2017 in O.S.No.43 of 2015, is set aside and I.A.No.137 of 2017 is remitted to the file of the Court below. The revision petitioner is directed to file an additional affidavit with the proper description of the 'B' schedule property within a period of two weeks from the date of receipt of a copy of this order. On receipt of the additional affidavit, the Court below is directed to consider I.A.No.137 of 2017 afresh and decide the same on merits and in accordance with law. If the additional affidavit is not filed with correct description within two weeks, I.A.No.137 of 2017 shall be automatically dismissed without reference to this Court and the learned Judge shall proceed with the suit in accordance with law.

With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)



The Principal District Munsif,
Kuzhithurai.

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+ 1 CC TO Mr.C.GODWIN, ADVOCATE IN SR No. 54406
+ 1 CC TO Mr.N.DILIP KUMAR, ADVOCATE IN SR No. 54862

BALA

TE/JC/SAR-1 : 11/04/2018 : 3P/4C

order made in
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12.03.2018