



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2018

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WEB COPY

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.(PD) (MD)No.2331 of 2016

and

C.M.P.(MD) .No.10771 of 2016

1.Vasikaran

2.Anitha

.. Petitioners/Respondents 2 & 3/
Defendants 2 & 3

/Vs./

1.Ajitha

2.Ganesan

.. 1st Respondent/Petitioner/Plaintiff
.. 2nd Respondent/1st Respondent/
1st Defendant

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records of the learned I Additional District Munsif Court, Kumbakonam in I.A.No.79 of 2016 in O.S.No.610 of 2006 and set aside the fair and decreetal order dated 06.09.2016.

For Petitioners : Mr.K.K.Senthil Velan
For Respondents : Mr.G.Gomathi Sankar for R1
No Appearance for R2

ORDER

The defendants 2 and 3 are the revision petitioners herein. O.S.No.610 of 2006 was filed before the I Additional District Munsif, Kumbakonam, seeking the relief of permanent injunction, mandatory injunction and recovery of possession in respect of 'B' schedule property. The suit was originally filed only against one Ganesan. In fact even before the institution of the suit, the said Ganesan had sold the suit property in favour of the revision petitioners on 24.07.2006. This matter was clearly stated in the written statement filed by the original defendant. But then, the plaintiff took several hearings to implead the revision petitioners as defendants 2 and 3. Thereafter, the plaintiff filed I.A.No.79 of 2016 seeking amendment of the plaint as mentioned in the petition, it is the third application filed by the plaintiff. The Court below, taking note of the fact that it is a pre-trial amendment, took a liberal view and allowed the said petition by order, dated 06.09.2016. The correctness of the said order is under challenge in this Civil Revision Petition.

2.The learned counsel appearing for the revision petitioner assailed the order impugned in this Civil Revision Petition on more than one ground. He contended that based on the Advocate Commissioner's report to which the revision petitioners were not



parties, the amendment in question has been allowed. He also highlighted the fact that the plaintiff has been filed one application after another for amending the plaint. He also pointed out that the plaintiff filed the suit as a collusive one against the vendor of the revision petitioners herein. He had also drew the attention of this Court to the fact that even in the sale deed, dated 24.07.2006, the compound wall in question has been clearly mentioned. Therefore, the plaintiff could not have described it as black stone fence.

3.Though all the submissions of the revision petitioners are having much force, I am of the view inasmuch as it is a pre-trial amendment, and hence the same need not be interfered with. The amendment application was taken out only on 01.04.2016. The suit itself was filed way back in the year 2006. Normally an amendment relates back to the institution of the suit. But, in this case, I am of the view that the amendment can be allowed to come into effect only from the date on which I.A.No.79 of 2016 was filed. The revision petitioners shall of course be at liberty to file their written statement, in which they can put forth the defence available to them, in accordance with law including assertion of their title. Subject to this clarification, the order impugned in this Civil Revision Petition is sustained.

4.Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar (CS-I)

To

1.The I Additional District Munsif, Kumbakonam.

2.The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.(2 COPIES)

+1cc to Mr.G.GOMATHISANKAR, Advocate, SR.No.80688

+1cc to Mr.K.K.SENTHILVELAN, Advocate, SR.No.81004

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28.08.2018

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