



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.PD[MD]No.445 of 2016

Mookan @ Arokiasamy : Petitioner

Vs.

Xavier : Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 04.08.2015 made in I.A.No.116 of 2015 in O.S.No.697 of 2013 on the file of the III Additional District Munsif, Trichy, by allowing this Civil Revision Petition.

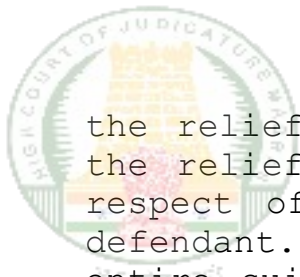
For Petitioner : Mr.K.K.Senthil
For Respondent : Mr.G.Kasinathadurai

O R D E R

The defendant in O.S.No.697 of 2013, on the file of the III Additional District Munsif, Trichy, is the revision petitioner herein. The respondent herein filed the said suit seeking the relief of permanent injunction. The respondent is the purchaser from the revision petitioner. The total extent of property originally owned by the revision petitioner was 21 cents. The revision petitioner sold 12 cents to the respondent's mother and retained 9 cents. After the Advocate Commissioner filed the report, the respondent herein filed I.A.No.116 of 2016 for amending the plaint. The plaintiff wanted to add a prayer for recovery of possession and mandatory injunction for demolishing the encroachment said to have been made in the suit property. The Court below taking into account the fact that it is a pre-trial amendment, allowed I.A.No.116 of 2015 by order dated 04.08.2015. The correctness of the said order is challenged in this Civil Revision Petition.

2.Heard the learned Counsel on either side.

3.As rightly pointed out by the learned Counsel for the revision petitioner, the plaintiff cannot be allowed to maintain mutually destructive pleas. The plaintiff originally sought only



the relief of injunction. By this amendment, the plaintiff wants the relief of recovery of possession and mandatory injunction in respect of the encroachment said to have been committed by the defendant. But, the prayer for permanent injunction covering the entire suit property is still maintained. No amendment has been sought in respect of the original prayer made in the plaint. Thus, as rightly pointed out by the learned Counsel for the petitioner, the respondent cannot ask for permanent injunction and also recovery of possession in respect of the portion of the suit property in the same breadth.

4.The case on hand is squarely covered by a decision of this Court reported in **2015 (1) CTC 398 [C.R.Umapathy and others Vs. D.Sathyanarayana Chettiar]**. Since this aspect of the matter was not taken note of by the Court below, the order impugned in this Civil Revision Petition is set aside.

5.The learned Counsel for the respondent submits that the trial of the suit is yet to be commenced. Since the amendment allowed has been set aside only on a technical ground, he wanted this Court to give liberty to the respondent to file fresh amendment application. Such liberty is granted.

6.With this liberty, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The III Additional District Munsif,
Trichy.

+ 1 CC TO Mr.K.K.SENTHIL, ADVOCATE IN SR No. 80806
+ 1 CC TO Mr.G.KASINATHA DURAI, ADVOCATE IN SR No. 80552

MR

TE/PM/SAR-2 : 15/10/2018 : 2P/4C

ORDER MADE IN
C.R.P.PD[MD]No.445 of 2016
28.08.2018