



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.1788 of 2018

and

C.M.P. (MD) No.7810 of 2018

1.Balakrishna Nair

2.Smt.Beena Kumari

3.Shanu Balan

.. Petitioners/Respondents/Defendants

/Vs./

A.K.Baby

.. Respondent/Petitioner/Plaintiff

PRAYER: This Civil Revision Petition is filed under Article 227 of the constitution of India, to call for the records and to set aside the fair and decreetal order passed in I.A.No.46 of 2018 in O.S.No.205 of 2016 on the file of the learned Principal District Munsif, Kuzhithurai, dated 21.04.2018 by allowing this Civil Revision Petition.

For Petitioner: Mr.E.K.John Victor Ellis

ORDER

The defendants are the revision petitioners herein. The suit is one for declaration of easementary right over the 'C' schedule pathway and for permanent injunction. During the pendency of the suit, I.A.No.46 of 2018 was filed by the plaintiff for including the relief of Mandatory injunction. The case of the plaintiff is that during the pendency of the suit the compound wall in question was put up and therefore it became necessary for him to seek this additional relief. The court below allowed the said application by order, dated 21.04.2018. The correctness of the said order has been questioned in this Civil Revision Petition.

2.Heard the learned counsel appearing for the petitioner.

3.The learned counsel for the petitioner contended that the compound wall is in existence for more than 20 years and it is incorrect to say that it was put up during the pendency of the suit proceedings. I am of the view that reserving all the defence open to the petitioner herein, the order impugned in the Civil Revision Petition can be sustained. After all it is a pre-trial amendment. Therefore, the Court below was justified in allowing the application and clarified that it did not go into the merits of the matter.



Therefore, the revision petitioner has not suffered any prejudice by permitting the plaintiff to amend the plaint. I finds no merit in this Civil Revision Petition.

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

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-IV)

TM

To

1. The Principal District Munsif, Kuzhithurai.

+1cc to Mr. E. K. John Victor Ellis, Advocate in SR No. 79322

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NM/RP/SAR IV/12.11.18/2P/3C.