

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (NPD).No.1908 of 2010

and

M.P.No.1 of 2010

Suromani

... Petitioner

.. Vs ..

1. Mathiyazhagan

2. Selvamani

3. D.Maharaja

4. D.Robbert

5. D.Lillipushpam

6. D.Latha

7. Rajamani

8. D.Vennila

... Respondents

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PRAYER : Civil Revision Petition filed under Section 115 of C.P.C, against the fair and decretal order dated 28.04.2010 made in I.A.No.90 of 2010 in O.S.No.171 of 2007 on the file of the First Additional District Munsif Court, Bhavani.

For Petitioner : Mr.N.Manoharan
For Respondents : No Appearance

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ORDER

Challenging the fair and decretal order passed by the learned First Additional District Munsif, Bhavani, in I.A.No.90 of 2010 in O.S.No.171 of 2007, dated 28.04.2010, the plaintiff has filed the above Civil Revision Petition.

2. The petitioner, who is the plaintiff in O.S.No.171 of 2007, has filed the said suit claiming 1/9th share of partition. After contest, preliminary decree was passed. Thereafter, the plaintiff has filed an interlocutory application in I.A.No.361 of 2009 for passing of final decree and for the said final decree proceedings, the respondents 1 to 6 herein/defendants 1 to 3, 5, 6 and 8 have filed counter affidavit setting out their objections. When the said I.A.No.361 of 2009 for passing of final decree is pending, the respondents 1 to 6 herein/defendants 1 to 3, 5, 6 and 8 have filed an application in I.A.No.90 of 2010 seeking permission of the Court to file additional counter statement on the ground that pending suit, the first

defendant has constructed a building in the suit property to an extent of 700 sq. ft. alone, out of total suit property an extent of 0.04.25 hectares and hence, the same was omitted to be mentioned due to inadvertence in the earlier counter affidavit and therefore, sought to file additional counter affidavit which was resisted on the ground that he has not put up construction.

3. It is seen from the records that the learned First Additional District Munsif, Bhavani, has recorded a finding that the first petitioner in I.A.90 of 2010 [first defendant in the suit] has put up construction in the suit property in an extent of 700 sq. ft. which is the specific grievance of the party and hence, the observation of the learned First Additional District Munsif, Bhavani, that a building was put up by the first defendant hereby stands vacated as the same was disputed by the counsel. Hence, the order passed by the learned First Additional District Munsif, Bhavani, in I.A.No.90 of 2010 is sustained only to the extent of allowing the plea of construction of the building and the question as to whether who had constructed the building has to be decided in I.A.No.361 of 2009. Both the parties are given liberty to adduce evidence in this regard in the final decree proceedings.

4. With this modification, this Civil Revision Petition is disposed of and the order passed by the learned First Additional District Munsif, Bhavani, in I.A.No.90 of 2010 in O.S.No.171 of 2007, dated 28.04.2010, shall stand modified to the limited extent indicated above. No costs. The connected miscellaneous petition is closed.

03.12.2019

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

Jrl

To

The First Additional District Munsif,
Bhavani.

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RMT.TEEKAA RAMAN., J.

Jrl



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