IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).Nos.1543 & 1544 of 2018
&
C.M.P.No.8244 of 2018

Mrs. Rajagopal (Deceased)

1.Kandhasamy

2.Kasturi ...Petitioners

Vs

1.K.Balakumaran

2.B.Rajathilagam ... Respondents

Prayer in C.R.P.No.1543 of 2018: Civil Revision Petition is filed Article 227 of the Constitution of India against the fair and decreetal order dated 06.03.2018 made in I.A.No.202 of 2018 in O.S.No.6268 of 2010 on the file of the XII Assistant City Civil Court, Chennai.

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Prayer in C.R.P.No.1544 of 2018: Civil Revision Petition is filed Article 227 of the Constitution of India against the fair and decreetal order dated 06.03.2018 made in I.A.No.9418 of 2017 in O.S.No.6268 of 2010 on the file of the XII Assistant City Civil Court, Chennai.

For Petitioners : Mr.N.A.Nissar Ahmed
for Mr.R.Dhanasekar

For Respondents : Mr.V.M.Venkatramana

ORDER

The above Civil Revision Petitions are filed challenging the post trial amendment which have been allowed by the learned XII Assistant City Civil Judge, Chennai. With a view to brevity and clarity the facts have been stated in a nutshell.

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2.The respondent/plaintiff had filed a suit O.S.No.6268 of

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2010 on the file of the learned XII Assistant City Civil Judge, Chennai, for a permanent injunction restraining the defendants from putting up any construction in the B-Schedule property without an approved building plan and for a mandatory injunction directing the defendants to demolish the offending structure which has been put up without following the building rules. The B-Schedule property in the original plaint has been described as follows:

> *"Chennai District Chennai Central Registration District Ashok Nagar Sub Registration District Mambalam Guindy Taluk Kodampakkam Village Block 113 T.S.No.125 in this, M.G.R.Nagar Scheme Thiru Vi.ka Street Plot No.410, 411 Door No.5A and 5B measuring approximately 1,500 Sq.ft bounded on the East and south by third parties property and on the west by Thiru. Vi.Ka Street."*

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3.Thereafter, the plaintiff had come forward with an amendment petition in I.A.No.14111 of 2014 to amend the B-

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Schedule property with reference to T.S.number and Door number. In the affidavit filed in support of the said petition the plaintiff has stated that the T.S.number and door number had been wrongly mentioned in B-Schedule of the plaint and this was noticed only when he perused the plaint, the error which according to him was only a typographical one.

4.Despite the opposition by the defendants the said petition was allowed by an order dated 25.06.2017. This order was taken up on challenge in C.R.P.No.379 of 2016 and was dismissed by an order dated 22.03.2019.

5.Thereafter, the respondents/plaintiffs have come forward with yet another application in I.A.No.9418 of 2017, to amend the B-Schedule property once again when the matter was reserved for the Judgement. In the affidavit filed in support of the said petition he would state that it was only now that he had noticed that the plot numbers, boundaries, linear measurement

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and extent was not furnished fully (in fact the suit schedule property has been wrongly mentioned). Therefore, he sought to amend the application. The property that was now sought to be substituted in the original B-Schedule is as follows:

"Chennai District, Chennai Central registration District, Ashok Nagar Sub Registration District, Mambalam Guindy Taluk, Kodambakkam Village, Block No.113, TS.No.127, in MGR Nagar Scheme, Thiru.Vi.Ka Street, Plot No.410, door No.5, bounded on the north by : Plot No.409, South by : Plot No.411, East by Plot No.470 & 468 and West by Thiru.Vi.Ka.Street measuring East West on the northern side 11.4 metre Southern side 11.4 metre, North to South on the Easter side 6.2 metre, and western side 6.2 metre admeasuring 70.50sq. metre together with building there on in door No.5", instead of "Chennai District, Chennai Central registration"

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6.The detailed counter has been filed by the revision petitioners wherein they have contended that the application is

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nothing but an abuse of process of Court particularly when the plaintiff has come forward with the case of mandatory injunction. While this application was pending the Court had suo moto re-opened the case for clarification and when the matter was posted for clarification the plaintiff have come forward with yet another application in I.A.No.202 of 2018 to once again amend the plaint with reference to the B-Schedule property. In the affidavit filed in support of the said application, the plaintiff would submit that he had omitted to pray as follows, "In the event of the defendants not demolishing the 4th defendant should demolish the offending structure".

7.This was the yet another amendment that he sought to introduce after the suit was filed as early as in the year 2010. The two I.A.Nos.9418 of 2017 and 202 of 2018 was allowed by the learned XII Assistant City Civil Judge, Chennai by an order dated 06.03.2018. As regards the grounds for allowing the application in I.A.No.9418 of 2017, the learned Judge would

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contend that a post trial amendment cannot be granted particularly when the plaintiffs were aware of the extent of the B-Schedule property. Even at the time of the filing of the present suit they have failed to incorporate the more details about the B-Schedule property.

8.However, for unknown reasons the learned Judge proceeded to hold that no prejudice would be caused to the defendants on the contrary greater prejudice would be caused to the the plaintiffs and therefore they must be given an opportunity to amend the plaint and the defendants can filed an additional written statement. The same view has been taken by the learned Judge in I.A.No.202 of 2018. It is challenging these orders that the revision petitioners/plaintiffs are before this Court.

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9.Heard the arguments of the counsels on either sides. Mr.N.A.Nissar Ahmed, learned counsel appearing on behalf of the

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revision petitioners would produce the following Judgements:

i)***Marappan Vs.S.Ammasi and others*** reported in ***2018 (3) MWN (Civil) 776***

ii)***N.Murali, Project Assistant, International Ocean Institute, Chennai Vs. International Ocean Institute, Rep by its Executive Director, Chennai*** reported in ***CDJ 2018 MHC 5536.***

10.Mr.V.M.Venkatramana, learned counsel for the respondents would argue that having filed an additional written statement the revision petitioners cannot be permitted to oppose the order and contend that they are aggrieved by the order.

11.Heard the counsels and perused the papers. It is seen that though the revision petitioner has been filed an application seeking an order of stay, stay was not granted and therefore the amended copy of the plaint and the additional written statement came to be filed and this does not take away the right of the

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revision petitioners/defendants to question the amendment that has been filed.

12.It is seen that the suit has been filed as early as in the year 2010, seeking the relief, also, for mandatory injunction stating that on the B-Schedule property a offending structure has been put up. It is seen from the records that from the year 2014 the plaintiffs have come forward with amendment applications all in respect of the B-Schedule. The first amendment application is to correct the T.S. Numbers and Door numbers, the second amendment is to substitute the plot number, boundaries, linear measurement etc., and the third amendment to add further to the relief. This conduct is nothing but an abuse of process of Court, particularly when the last two amendment applications have been filed at the time when the matter has been reserved for Judgement.

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13.As observed by this Court in the Judgement in

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Marappan Vs.S.Ammasi and others reported in ***2018 (3) MWN (Civil) 776,*** the conduct of the respondents/plaintiffs clearly demonstrates the dilatory tactics that has been adopted by the plaintiffs to put off the passing of Judgement and this Court should not be a party to such abuse by encouraging the filing applications of this nature.

14.The learned XII Assistant City Civil Judge, Chennai has also lost sight of the fact that by allowing these amendments the plaintiff who has knocked at the doors of Justice just when he is led to believe that the Judgement would be delivered is relegated back to the stage of the pleadings on the basis of frivolous applications. The Court ought not to have allowed the plaintiffs to take advantage of the legal process for ensuring that the suit is kept pending for years together. The order suffers from perversity and is liable to be set aside, accordingly, I.A.Nos.9418 of 2017 and 202 of 2018 are set aside.

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The Civil Revision Petitions are allowed. There shall be no order as to costs. Consecutively, connected Civil Miscellaneous Petition is also closed.

05.04.2019

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Index : Yes/No
Speaking order/non-speaking order
Note:Order Copy to be issued on 08.04.2019

To
The XII Assistant City Civil Judge,
Chennai.

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P.T.ASHA, J.,

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