

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD) No.2467 of 2014
and
M.P. No.1 of 2014

1.V.Ganapathy Gounder
2.Sengmmal
3.C.Sarojini
4.C.Kokilavani

... Petitioners

(Petitioners 2 to 4 brought on
record as LRs of the deceased
sole petitioner viz., V.Ganapathy
Gounder vide Court order dated
11.06.2019 made in
CMP.No.11131, 11132 and 11134
of 2019 in CRP.No.2467 of 2014)

Vs

V.Arumugam

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decretal order dated 20.01.2014 in I.A.No.1188 of 2013 in O.S.No.952 of 2005 on the file of the learned III Additional District Munsif Court, Coimbatore.

For Petitioners 2 to 4 : Mr.C.R.Prasanan

For Respondent : Mr.L.Mouli

ORDER

The instant civil revision petition has been filed challenging the order dated 20.01.2014 passed by the learned III Additional District Munsif, Coimbatore in I.A.No.1188 of 2013 in O.S.No.952 of 2005.

Brief facts leading to the filing of the instant revision:

2. The first petitioner is the plaintiff in the suit O.S.No.952 of 2005 and the respondent is the defendant. Originally the first petitioner has filed the said suit for a permanent injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit schedule property which is a cart track. It is the case of the first petitioner that after filing of the suit, he came to know that the respondent has put up construction in the said cart track which is the suit schedule B property which necessitated him to file I.A.No.1188 of 2013 in O.S.No.952 of 2005 seeking for amendment of the plaint under Order VI Rule 17 of CPC to add some paragraphs in the plaint which are extracted hereunder:

“ Proposed Amendment

1.Add the following in the plaint as para

“ The plaintiff submits that the defendant himself invoked an Appointment of a Commissioner, who also made a local inspection and filed a detailed report with plan. The plan, though, is not actual measurements, but, it contained all essential physical features as noted by the Commissioner. After the Commissioner's Report, the defendant has committed further atrocities by digging a bore well. At that time, the defendant has put up a hallow block wall partially. However, by cleverly, he has extended the same fully blocking the passage of the plaintiff from Thandalraman Street on the South to North cart track.

The hallow block wall has been put up exactly on the West of Natarjan's House, East of Arumugam's lands and North and South of the Cart track. The sole idea is to block the cart track right of the plaintiff.

The defendant has also dug a bore well unauthorisedly, 30 feet of hallow block wall 30 x 1 = 30 feet and built up a Metal Sheet Shed 27 x 60 = 1620 Sq. ft and also blocking a portion of the further South to North cart

track. Thus, the cart track is the only access for the plaintiff. As the defendant had no right to construct any wall, unless the wall is removed by a decree of mandatory injunction, the plaintiff will be put to grave hardship and loss. The bore well, coconut plant trees, safota plant trees which are in the cart track portion has to be closed. Unless mandatory injunction is granted for closure of the bore well and removal of the obstructions, the plaintiff will be put to loss.

The hallow block wall was constructed partially in October, 2010 and again extended on 01.06.2013 and on which dates, the borewell was also sunk by the defendant. Both these are illegal and encroachment. Hence, the plaintiff seeks mandatory injunction.

2. In the plaint, in the Court fee column, add after the present Relief after re-numbering the present relief as relief No.2 and No.3

“ For the relief of mandatory injunction (removal of hallow block wall 30' x 1' and metal Sheet Shed 27 x 60 feet

= 1620 Sq. ft.

“ For the relief of mandatory injunction (for removal of bore well and coconut plant trees, safota plant trees.

3. In the prayer column para, add the following.

(b) “ to grant a decree for mandatory injunction for removal of Metal Sheet Shed 27 x 60 feet and the hallow block wall 30 x 1 feet described in the 'C' schedule.

(c) to grant a decree for mandatory injunction for removal of the bore well and coconut plant trees and sofota plant trees

In the 'D' Schedult.

(d) and in plaint prayer column in b & c delete and substitute as 'D' and 'E'

4. In the Description of Property, column para C and D add the following.

'C' SCHEDULE

In Sangoor Village, the Cart track running South to North and branches off from East to West Thandal Ramam Road and 30 feet width within the following boundaries.

Bounded on the south by - Thandalrama Street

On the North by - Plaintiff's 'A' Schedule land

On the West by - Shanmugam Road

East by - Shanmugam Land and Nataraja Gounder lands

In this boundaries encroached by the defendant in extent on

Both side East West - 27 feet

Both sides North South - 60 feet

The Total extent of $27 \times 60 = 160$ Sq. ft with built up a Sheet Metal shed and built up hallow block wall East West 30 x 1.

Within the following boundaries.

Bounded on the South by - Plaintiff's cart track

Bounded on the North by - Existing cart track

Bounded on the West by - Shanmugam land

Bounded on the East by - Shanmugam land and Nataraja Gounder lands

The hallow block wall in East-West 30 feet and North

South one feet

Total extent $30 \times 1 = 30$ Sq. ft

“D” SCHEDULE

In Sanganoor village, the Cart track running South to North and branches off from East to West Thandalramam Road and 30 feet width within the following boundaries.

Bounded on the South by - Thandalramam Road

Bounded on the North by - Plaintiff's 'A' schedule land

Bounded on the West by - Shanmugam land

Bounded on the East by - Shanmugam land and
Nataraja Gounder land

In this boundaries encroached by defendant in an extent of cart track running towards North South cart track running towards North South Cart track digging one bore well and 7 nos. of coconut plant trees and 5 nos. of safota plant tree.”

3. A counter affidavit was also filed by the respondent in I.A.No.1188 of 2013 wherein he has stated that without seeking for declarative relief, as the respondent is disputing the title of the petitioner, the petitioner is not entitled for the amendment sought for as prayed for in I.A.No.1188 of 2013. The Trial Court by its order dated 20.01.2014 dismissed I.A.No.1188 of 2013 in O.S No.952 of 2005 filed by

the petitioner on the ground that the petition filed in I.A.No.1188 of 2013 is a defective one as the petitioner has not stated anything about the court fee in the application. However, the Trial Court has given liberty to the petitioner to file a fresh application stating the correct facts. Aggrieved by the dismissal of I.A.No.1188 of 2013 in O.S.No.952 of 2005, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India. During pendency of this revision, the first petitioner was dead and his legal representatives were impleaded as petitioners 2 to 4.

4. Heard Mr.C.R.Prasanan learned counsel for the petitioners 2 to 4 and Mr.L.Mouli, learned counsel for the respondent.

Discussion:

5. As seen from the averments made in the affidavit filed in support of I.A.No.1188 of 2013, only after filing of the suit, that too, after seeing the Advocate Commissioner's report submitted to the Court, the first petitioner came to know that the respondent/defendant has constructed hallow block wall and also built up a metal sheet shed to

block the petitioners' passage completely on 01.06.2013 and therefore the petitioners does not have any passage to enter into their property from the main road. In such circumstances, the petitioner has filed I.A.No.1188 of 2013 seeking for amendment of the plaint which includes apart from amending the pleadings, the relief of mandatory injunction for removal of the alleged construction made by the respondent, in the suit schedule property which is a cart track.

6. Admittedly, the amendment application was filed before the commencement of trial in the suit O.S.No.952 of 2005. It is settled law that while deciding the application for amendment filed under Order VI Rule 17 of CPC, if the said amendment application is filed before trial, the Court will have to be liberal. Admittedly, the suit was filed in the year 2005 and the amendment application was filed in the year 2013 on the basis that during pendency of the suit based on the Advocate Commissioner's report submitted to the Court, the first petitioner came to know that the respondent has put up construction over the cart track during pendency of the suit.

7. The Trial Court however dismissed the application solely on the ground that the first petitioner has not said anything about the payment of court fee in his affidavit filed in support of I.A.No.1188 of 2013 seeking for amendment which includes the prayer for mandatory injunction and at the same time, the Trial Court has given liberty to the first petitioner to file a fresh application stating the required facts necessary for filing the application under Order VI Rule 17 of CPC to enable him to get the relief for the proposed amendment sought for by him.

8. This Court has perused the impugned order and is of the considered view that the Trial Court ought to have allowed the amendment application on condition that the court fee payable for the proposed amendment which includes the relief of mandatory injunction is paid by the first petitioner. However, without any basis, the Trial Court has rejected the application.

9. Further I.A.No.1188 of 2013 has been filed by the first petitioner before commencement of trial as it is settled law that the

Court will have to be liberal in allowing the amendment application, if the same has been filed before trial. The Trial Court ought to have allowed the same, but has erroneously rejected the application.

10. Regarding the payment of court fee, even though there is no specific averment in the affidavit filed in support of I.A.No.1188 of 2013, that cannot be a ground for dismissal of application as once the said application is allowed, when the amendment is carried out by the petitioner, the Court registry will insist the petitioner to pay the required court fees for amendment made in the plaint with regard to the prayer.

Conclusion:

11. For the foregoing reasons, the Trial Court is directed to permit the petitioners 2 to 4 to carry out the amendment as prayed for in I.A.No.1188 of 2013 in O.S.No.952 of 2005. However, the said amendment can be carried out only after the petitioners 2 to 4 pay the required court fees as prescribed under under the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

12. In the result, the impugned order dated 20.01.2014 passed in I.A.No.1188 of 2013 in O.S.No.952of 2005 by the III Additional District Munsif Court, Coimbatore is hereby set aside and the Civil Revision Petition is disposed of in terms of the above referred directions. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order

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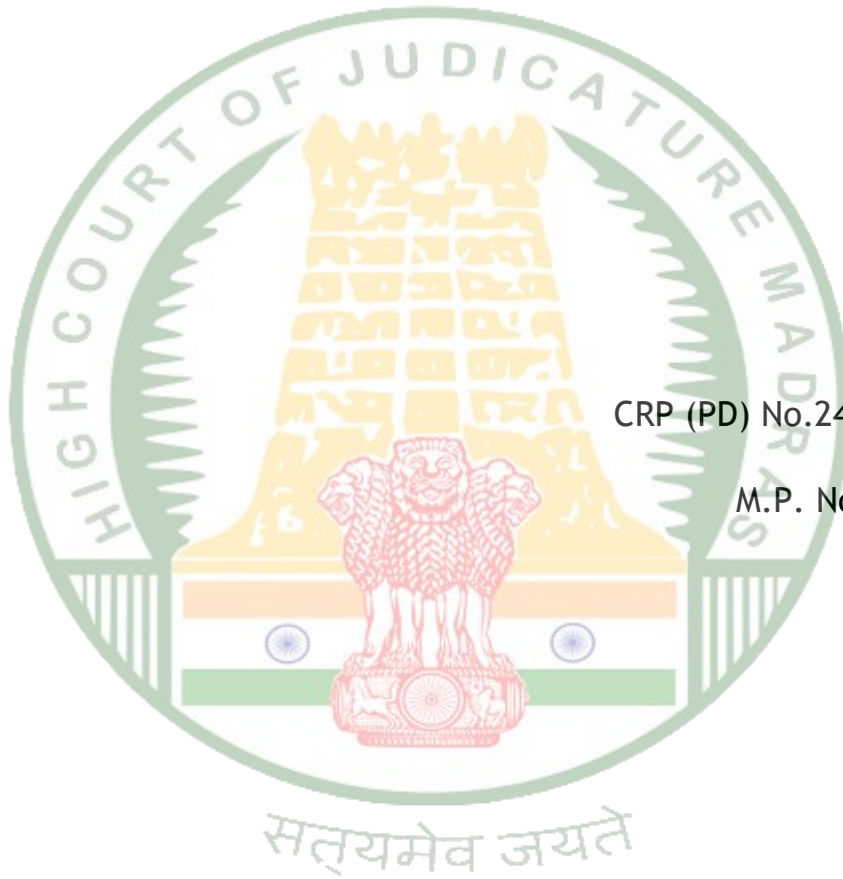
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The III Additional District Munsif Court, Coimbatore.

ABDUL QUDDHOSE, J.

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