

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.R.P.No.3519 of 2012 &
M.P.No.1 of 2012

M.Chandrasekar

..Petitioner

Vs.

1.G.Rajan

2.G.Palanisamy

3.G.Senthilkumar

4.S.N.Ganapathy

..Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 02.04.2012 made in I.A.No.139 of 2012 in A.S.No.70 of 2011, on the file of I Additional Subordinate Court, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondents : No appearance for R1 to R3
R4 - Exparte

O R D E R

Heard the learned counsel for the petitioner. None appear for the respondents.

2. The petitioner / plaintiff instituted the Suit for bare injunction against the defendants / respondents in O.S.No.697 of 2009 on the file of the learned District Munsiff, Erode. After contest, the said suit was decreed. Challenging the Judgment and Decree, the respondents / defendants have filed the Appeal in A.S.No.70 of 2011 before the learned I Subordinate Judge, Erode. During the pendency of the Appeal, the respondents / defendants filed an Application in I.A.No.139 of 2012 under Order 41 Rule 27 and Section 151 of C.P.C. to receive additional documents. The said Application was allowed by the learned I Additional Subordinate Judge, Erode. Challenging the said order, the petitioner / plaintiff has filed the present Revision before this Court.

3. The learned counsel for the petitioner / plaintiff would submit that the petitioner filed the suit for bare injunction against the respondents and the said suit was decreed. Challenging the same, the respondents / defendants filed the Appeal and during the pendency of the Appeal, the respondents / defendants have filed an Application to receive additional documents under Order 41 Rule 27. In the Application, the respondents have stated that the approved plan of the layout pertaining to Survey Nos.25, 26, 27 Part, 28 Part, 37 and 38 of 85 Nanjai Uthukuli Village, Erode Taluk does not show the existence of any site as 2 B and this was not the pleading of the respondents in their written statement and the learned Judge failed to note that no party can lead evidence on an issue / point not raised in the pleadings. It is further submitted that the Application filed under Order 41 Rule 27 CPC seeking permission to lead additional evidence, should have been heard along with the Appeal, however, the learned I Additional Subordinate Judge, Erode, independently dealt with the Application and allowed the Application. Therefore, the order passed by the learned Judge is against law, weight of evidence and all probabilities of the case, which warrants interference of this Court.

4. It is not in dispute that the the petitioner / plaintiff instituted the suit in O.S.No.697 of 2009 for bare injunction. After contest, the suit was decreed. Against which, the respondents / defendants have preferred an Appeal in A.S.No.70 of 2011 and during the pendency, they filed an Application in I.A.No.139 of 2012 in A.S.No.70 of 2011 under Order 41 Rule 27 and Section 151 of C.P.C. to receive additional documents. The said Application was independently dealt with by the appellate Court and allowed the Application on condition that the respondents / defendants have to pay a sum of Rs.1,000/- to the petitioner / plaintiff. Challenging the order passed by the learned I Additional Subordinate Judge, Erode, the plaintiff is before this Court.

5. It is to be noted that the Hon'ble Supreme Court and this Court have repeatedly held that the Application filed under Order 41 Rule 27 to receive the additional evidence at the appellate stage, and that Application should be dealt along with the Appeal and the Application filed under Order 41 Rule 27 shall not be dealt with independently. Therefore, the order passed by the learned I Additional Subordinate Judge, Erode is set-aside and the learned I Additional Subordinate Judge, Erode is directed to hear the application in I.A.No.139 of 2012 in A.S.No.70 of 2011 along with the Appeal and dispose both the Interlocutory Application and Appeal on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

6. With the above observations, the Civil Revision Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

r n s

To

The I Additional Subordinate Judge,
I Additional Subordinate Court,
Erode.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.25366

C.R.P.No.3519 of 2012 &
M.P.No.1 of 2012

RJI (CO)
KKV/18/08/2020