

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 171 of 2018

in

C.M.P.No. 977 of 2018

1.Sadhu Shanmugha Adigalar

2.Samiappa Pulavar

Managing Trustee,

Elakkana Muthukumarasamy

Thambiran Loogam Trust, No.366,

Thangavel Nagar, N.G.G.O. Colony,

Coimbatore.

..Petitioners/Petitioners

Vs.

1.Venkatesan

2.Shanmugasundaram

..Respondent/Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders passed in I.A.No. 34 of 2017 in A.S.No. 94 of 2011 dated 01.08.2017 on the file of the Court of Principal District Judge, Cuddalore.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mrs. Hema Sampath

O R D E R

The appellant in A.S.No. 94 of 2011 has come up with this revision challenging the order of the Appellate Court dismissing his application in I.A.No. 34 of 2017 seeking amendment of the plaint in O.S.No. 71 of 2006 by including a prayer of future mense profits.

2. The suit filed as O.S.No. 221 of 2002 on the file of the District Munsif Court, Chidambaram upon transfer to the Sub-Court, Chidambaram was numbered as O.S.No. 71 of 2006. The suit was originally filed for a permanent injunction restraining the respondents from putting up any construction in the suit property, pending disposal of the suit in O.S.No. 240 of 2001 filed by the respondents for a permanent injunction restraining the petitioners herein from interfering with their possession. Since the respondents put up construction, pending suit, the petitioners were forced to amend the plaint seeking the reliefs of declaration of title and recovery of possession. The said amendment was allowed.

3. After trial, the suit in O.S.No. 221 of 2002, which was renumbered as O.S.No. 71 of 2006 was decreed and the suit in O.S.No. 240 of 2001 was dismissed. Aggrieved, the respondents herein have filed two appeals before the Principal District Court, Cuddalore. In the appeal against O.S.No. 71 of 2006, the petitioners filed I.A.No. 34 of 2017 seeking to amend the plaint to include the prayer for future mense profits as already stated.

4. This application was resisted on the ground of delay and on the ground that since the construction was put up by the respondents, the petitioner cannot seek mense profits on the basis that the building belongs to the petitioner. The learned Principal District Judge, Cuddalore, who heard the application dismissed the same concluding that since the petitioners have prayed for relief of recovery of possession after removal of the building, they cannot seek mense profits which accrued from the building. The learned Principal District Judge also faulted the petitioners for not filing the application, pending trial. Hence, this Civil Revision Petition.

5. I have heard Mr.A.Muthukumar, learned counsel for the petitioner and Mrs. Hema Sampath, learned Senior counsel for the respondent.

6. Mr.A.Muthukumar, learned counsel for the petitioner would submit that the Principal District Judge was not right in dismissing the application on the ground of delay. According to him, the construction was put up pending suit, the prayers for declaration of title and recovery of possession were included by way of amendment. The building was not completed and it was not fetching any income therefore, there was no cause of action for the petitioners to seek the relief of mense profits. He would further submit that whether the petitioners are entitled to mense profits for illegal occupation of the building, since they asked for recovery of possession after removal of the building in existence is a matter to be decided upon hearing he appeal. The lower Appellate Court was not right deciding the question on merits even while considering the application for amendment.

7. Contending contra, Mrs.Hema Sampath, learned Senior Counsel for the respondents would submit that the Appellate Court was right in dismissing the application for amendment on the ground that the petitioner having asked for relief of declaration of title and recovery of possession after removal of super structure cannot also ask for mense profit for the alleged illegal occupation of the building. She would further contend that the applicatin itself is belated and therefore, the Appellate Court was justified in rejecting the same. I have considered the rival submissions.

8. I do not think that the Appellate Court was right in dismissing the application to include the relief of future mense profits. The suit itself was filed for permanent injunction restraining the respondents from putting up construction. It is not in dispute that the construction was put up pending the suit for injunction and the suit itself was amended seeking declaration of title and recovery of possession. Now, the suit has been decreed, the occupation of the respondent has been held to be illegal. Therefore, the petitioner is entitled to claim mense profits.

9. The fact that the petitioners did not claim mense profits earlier would not deprive them of a claim to future mense profits also. The petitioners have alleged that the building was constructed and let out only after the decree justifying their claim for mense profits in the Appellate Court. This allegation in the affidavit has not been denied in the counter affidavit filed by the respondents. Once the occupation of the respondents is found to be illegal, the petitioners will have a right to seek mense profits also. Therefore, I am of the opinion that the lower Appellate Court was not right in dismissing the application

10. In view of the above, this Civil Revision Petition is allowed. the application in I.A.No. 34 of 2017 will stand allowed. It will be open to the respondents to raise the contention that the petitioner is not entitled to mense profits that accrued for the building in as much as the petitioner seeks delivery of vacant possession of the property after removal of the super structure at the time of the mense profits enquiry.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To:-

1.The Principal District Judge, Cuddalore

+1cc to M/s.R.Meenal, Advocate in SR.26812

+1cc to Mr.A.Muthukumar, Advocate in SR.26790

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KK (CO)

RV(15/9/2020)