

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.209 of 2018 and
CMP No.1172 of 2018

1. S.Ramachandran
2. S.Rajenderan
3. S.Boopalan
4. S.Baskaran

... Petitioners

Vs

1. P.Sivakumar
- 2 S.Peethambaram

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal in I.A No. 237 of 2016 in O.S No.316 of 2010 dated 04.11.2017 passed by the learned Additional Sub Judge, Vellore.

For Petitioners : Mr.B.Gopalakrishnan

For Respondents :Mr.A.U.Ilango

ORDER

The defendants in O.S.No.316 of 2010 have come up with this revision, challenging the order allowing an application for amendment filed by the plaintiffs in I.A.No.237 of 2016.

2. The suit was originally filed for a declaration of title of the plaintiff to the suit A and B Schedule properties, for a consequential injunction restraining the defendants from interfering from the plaintiffs peaceful possession of the said properties and for permanent injunction restraining the defendants from putting up any construction over the Suit B and C Schedule properties.

3. The defendants are resisting the suit contending that the plaintiff has no right over the suit B and C Schedule Properties. Pending suit, claiming that the defendants had encroached upon the suit C Schedule property and put up construction obstructing the right of way, the plaintiff came up with the instant application in I.A.No.237 of 2016, seeking to

amend the plaint to include the prayer for mandatory injunction to remove the encroachment made by the plaintiff and directing the defendants to leave open space over the BEFC portion to enable the plaintiff to reach ABCD portion. In support of the said claim, the plaintiffs would contend that they are entitled to a right of easement over the said property. The application for amendment was opposed on the ground that the construction was completed even prior to the suit and therefore the relief of mandatory injunction is barred by limitation.

4. The trial Court after referring to the various Judgments of this Court relating to amendment held that the question whether the relief sought for is barred by limitation or not, can be decided only after evidence is recorded. On the above conclusion, the learned trial Judge allowed the application for amendment, leaving the question of limitation open.

5. I have heard Mr.B.Gopalakrishnan, learned counsel appearing for the petitioners and Mr.A.U.Ilango, learned counsel appearing for the respondents.

6. Mr.B.Gopalakrishnan, learned counsel appearing for the petitioners would submit that the construction was put up even before the suit and therefore the prayer for mandatory injunction is barred by limitation. He would also submit that the plaintiffs should have sought for recovery of possession having admitted the fact that the defendants have encroached upon his property.

7. Contending contra, Mr.A.U.Ilango, learned counsel appearing for the respondents would submit that the trial Court has left the question of Limitation open and it is open to the defendants to raise all the pleas before the trial Court. Once the plaintiffs plead that the defendants have encroached upon only in the year 2016, then the application for amendment, on the face of it, cannot be termed as barred by limitation. If the defendants claim that the plea is barred by limitation, it is for the defendants to establish that the offending construction was made even three years prior to the date of the suit. Since it is a matter for evidence, the said question need not been gone into, while considering the application for amendment.

8. I am in agreement with the submissions of the learned counsel for the respondents. The plaintiff has come to Court with the specific case that the defendants have encroached over their property and put up construction in February 2016. This is stoutly denied by the defendants and it is stated that the construction was completed much earlier. These are all factual questions which have to be decided on evidence. After all the trial Court has only postponed the decision on these issues till recording of evidence. The learned trial Judge has not foreclosed the defence of the defendants regarding limitation.

9. I am, therefore of the considered opinion that the order of the trial Court, does not call for any interference at my hands. It will be open to the defendants to raise all plausible defences by way of an additional written statement.

10. In view of the above, the Civil Revision petition fails and it is accordingly dismissed. The order of the trial Court is confirmed. The defendants will have a right to file an additional written statement. It shall

be filed on or before 15.12.2020. The trial Court shall frame the necessary issues based on the additional written statement and dispose of the suit in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

12.10.2020

Note: Time bound order

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Index: Yes/No

Speaking order / Non speaking order

To

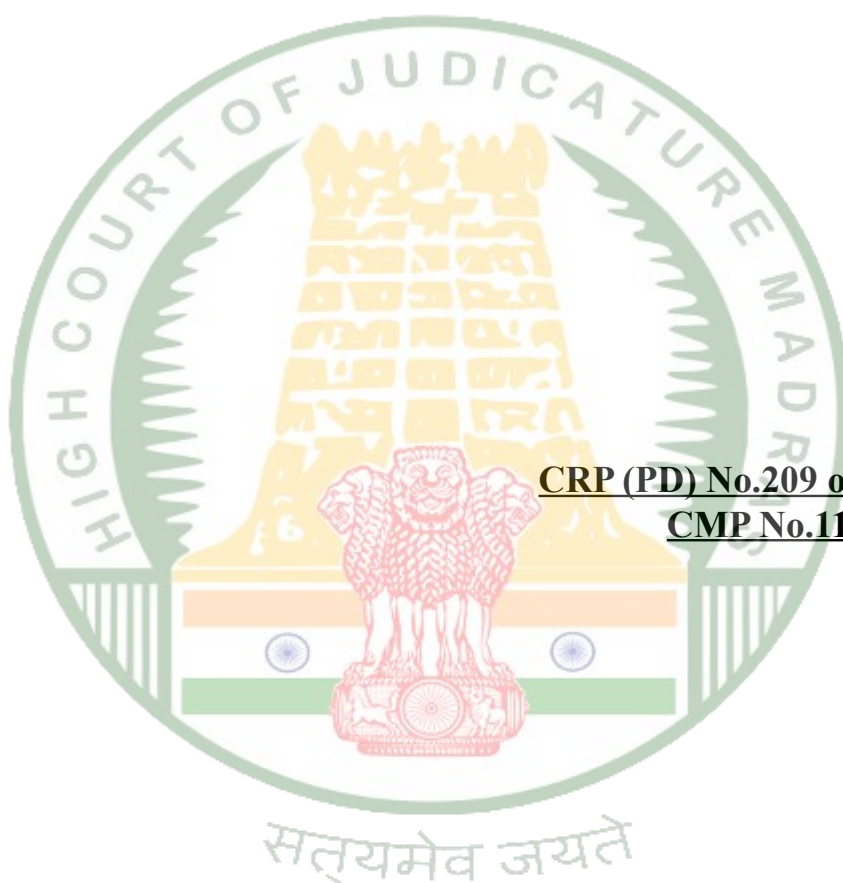
The Additional Sub Judge, Vellore



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R.SUBRAMANIAN, J.

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