

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD)No.2587 of 2018
and
C.M.P.No.15540 of 2018

Kanchana

...Petitioner/Defendant

Vs.

St.Zion Lutheran Centenary Church,
Indian Evangelical Lutheran Church,
Ambur Synod at Thuraiyeri Village,
Rep. by its Treasurer,
Building Committee, having Office at
IELC Thuraiyeri Village, Chettiyappanur Post,
Vaniyambadi Taluk, Vellore District. ...Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of Indian, against the fair and decreetal order in I.A.No.122 of 2018 in O.S.No.101 of 2015, dated 21.03.2018 on the file of the District Munsif Court, Vaniyambadi.

For Petitioner : Mr.P.A.Sudesh Kumar

For Respondent : Mr.K.A.Ravindran

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order in I.A.No.122 of 2018 in O.S.No.101 of 2015, dated 21.03.2018 on the file of the District Munsif Court, Vaniyambadi.

2. The defendant in the suit in O.S.No.101 of 2015, aggrieved by an order permitting the plaintiff to amend the plaint, has come up with this Civil Revision Petition. The suit in O.S.No.101 of 2015 was filed by the respondent herein, seeking relief of declaration of the title, mandatory injunction and recovery of possession etc. It is claimed by the plaintiff that the defendant had encroached upon a portion of the property measuring about 375 sq.ft., on the eastern side of the plaintiff's property. Pending suit a Commissioner was appointed and he has filed a report and plan. The report and plan filed by the Commissioner revealed that the actual encroachment is not on the eastern side but, it is on the south-western corner of the property. The extent of encroachment was also given as 376 and $\frac{1}{4}$ sq.ft. Before the Trial commenced the plaintiff filed an amendment application seeking

amendment to the description of property and the plaint plan also seeking recovery of possession of the exact portion that was encroached upon by the defendant as per the Commissioner's report. This application for amendment was resisted by the defendant contending that would change the entire cause of action for the suit and therefore, the same should not be allowed. The Trial Court upon a consideration of the facts and circumstances of the case concluded that the plaintiff has made out the ground for allowing the amendment and accordingly allowed the amendment. Hence, the Revision.

3. Heard, Mr. P.A.Sudesh Kumar, learned counsel appearing for the petitioner and Mr.K.A.Ravindran, learned counsel appearing for the respondent.

4. Mr.P.A.Sudesh Kumar, learned counsel appearing for the petitioner would vehemently contend that the Trial Court was not right in allowing the amendment by virtue of which there is a change in the suit property itself. He would submit that the plaintiff was not sure about its

case when the suit was filed and now, after collecting evidence by way of an Advocate Commissioner's report they are trying to alter the plaint.

5. Contending contra, Mr.K.A.Ravindran, learned counsel appearing for the respondent would submit that there is no amendment to the reliefs prayed for or the description of the property. A mistake had occurred while filing the original plaint whereby, the exact location of the area encroached upon was shown to be on the eastern side of the property and now, after the filing of the Commissioner's report that the plaintiff learns that the encroachment is actually on the south-western side of the property. The other allegations are not sought to be amended. It is only the schedule of property that is sought to be amended. Therefore, according to Mr.K.A.Ravindran, learned counsel, the amendment will not change the character of the suit as one for declaration and recovery of possession along with the prayer for mandatory injunction.

6. I have considered the rival submissions by the counsel on either

side.

7. It must be pointed that the application for amendment has been filed before the Trial commenced. This Court and the Hon'ble Supreme Court have repeatedly held that the Courts should be liberal in considering the applications for amendment which are filed before Trial. All that the plaintiff seeks to do, by way of amendment, is to change the location of the alleged encroachment. Originally the plaintiff had said that the encroachment is on the eastern side of the suit property. Now, after the filing of the Commissioner's report, the plaintiff realised that encroachment is actually on the western side of the property. At the worst, the plaintiff can be allowed to withdraw the suit and file a fresh suit with the same cause of action. That would amount multiplicity of proceedings and the proceedings would be dragged on for ever. I do not think that this is an amendment affecting the nature of the suit or the character of the suit as one for declaration and recovery of possession. The plaintiff seeks a declaration for the larger area and seeks removal of the encroachment of a smaller area. Therefore, I do not see any error in the order of the Trial Court allowing the

amendment.

8. Hence, this Civil Revision Petition fails, which is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

19-08-2020

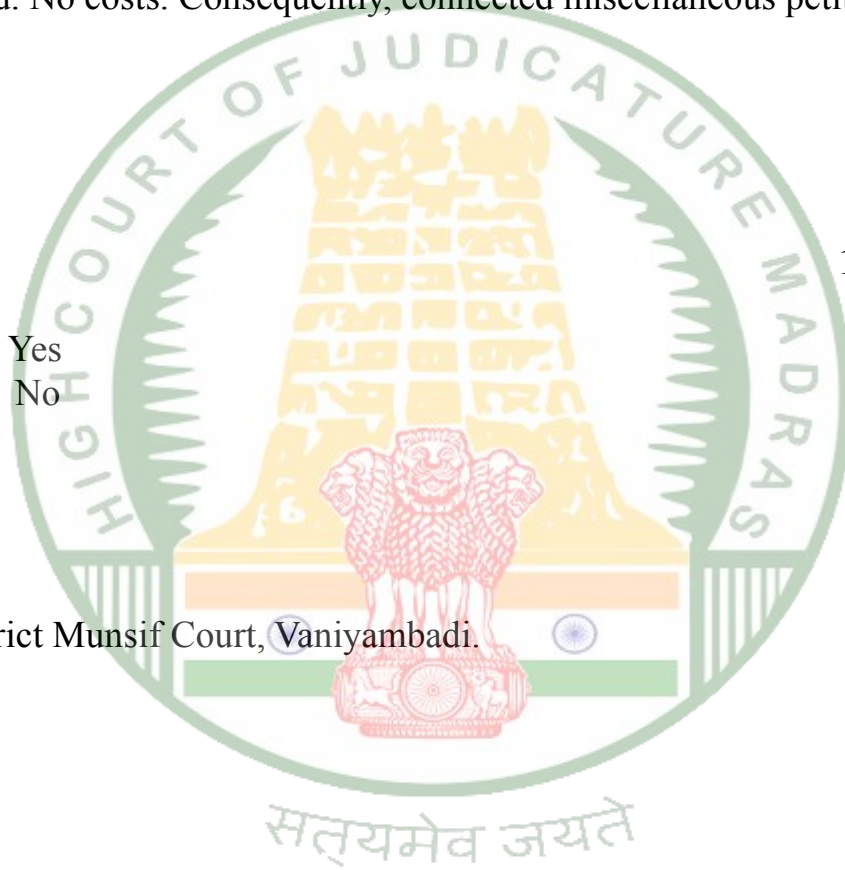
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To

The District Munsif Court, Vaniyambadi.



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R.SUBRAMANIAN, J.
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