

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2020

PRONOUNCED ON : 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.1741 of 2017
CMP.No.8227 of 2017

(Through Video Conferencing)

R.Lingan

Petitioner

Vs

1. M.Manonmani

2. The Commissioner, Udhagamandalam Municipality
The Nilgiris

Respondent

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decreetal order, dated 02.03.2017, made in IA.No.26 of 2017 in OS.No.226 of 2008, by the District Munsif Court, Udhagamandalam.

For Petitioner : Mr.P.Ravi Shankar Rao

For Respondent : Mr.P.Srinivas

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal order, dated 02.03.2017, made in IA.No.26 of 2017 in OS.No.226 of 2008, by the District Munsif Court, Udhagamandalam.
2. The facts of the case, in a nutshell, leading to filing of this Civil Revision

Petition are as follows:-

(a) The 1st Defendant in OS.No.226 of 2008, on the file of the District Munsif Court, Udhagamandalam, is the Petitioner herein and the 1st Respondent herein is the Plaintiff. The said suit was filed for permanent injunction restraining the 1st Defendant from resting his beam into the already existing beam of the Plaintiff and from putting up any unauthorised construction in the suit property. The Plaintiff has filed IA.No.26 of 2017 to amend the plaint, which was originally filed for permanent injunction, into one for mandatory injunction and permanent injunction. By the impugned order, the IA was allowed. As against the same, this Civil Revision Petition has been filed by the 1st Defendant.

3. This court heard the learned counsel on either side.
4. The learned counsel for the Petitioner/ 1st Defendant has submitted that the amendment sought for by the Plaintiff would change the original cause of action and the character of the suit and that there was no reason assigned by the Plaintiff for the delay of more than seven year in filing the petition to amend the plaint and that only with a view to protract the proceedings, amendment was sought after long period, that too after dismissal of CRP.No.607 of 2017 filed by the 1st Defendant, which was disposed of by this Court, by order dated, 11.11.2016, directing the suit to be disposed of on or before 31.3.2017 and hence, this Civil Revision Petition is to be allowed.

5. The learned counsel for the Respondent/ Plaintiff has submitted that since the 1st Defendant has put up unauthorised constructions, plaint is necessarily to be amended into one for mandatory injunction and permanent injunction and that if the amendment is not allowed, he would be put to irreparable hardship and loss and hence, Civil Revision Petition is to be dismissed.
6. This Court has given its anxious consideration to the submissions of the learned counsel on either side and also carefully perused the materials placed on record.
7. Originally, the suit was filed for permanent injunction in 2008 and the amendment was sought for mandatory injunction and permanent injunction in 2017. In this case, without the prayer for declaration of title, the question of granting mandatory injunction does not arise and that in a simple suit for permanent injunction, there cannot be a prayer for mandatory injunction. On these simple propositions, the impugned order, allowing mandatory injunction and permanent injunction, cannot be sustained and accordingly, it is liable to set aside.
8. The suit is in the stage of trial. In CRP.PD.No.607 of 2016 filed by the 1st Defendant, by order dated, 10.11.2016, this Court had already directed for early disposal of the suit on or before 31.03.2017 and hence, suitable direction may be given for early disposal of the suit.

A.A.NAKKIRAN, J.

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9. In fine, this Civil Revision Petition is allowed. No costs. Consequently, the connected MP is closed. The impugned order, dated 02.03.2017, made in IA.No.26 of 2017 in OS.No.226 of 2008, by the District Munsif Court, Udhagamandalam is set aside. There shall be a direction to the Trial Court to dispose of the suit, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

11.12.2020

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The District Munsif Court, Udhagamandalam

Pre-Delivery Order in
CRP(PD)No.1741 of 2017

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