



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP (MD)Nos.463 & 464 of 2020

and

CMP (MD)No.2850 of 2020

in

CRP (MD)No.463 of 2020

Chandrasekhara Babu

.. Petitioner in both CRPs.
Petitioner/Plaintiff

Vs.

Gnanadhas

... Respondent in both CRPs.
Respondent/Defendant

Civil Revision Petitions filed under Article 227 of the Constitution of India to call for the records relating to Fair and decreetal orders passed by Principal District Munsif Court, Padmanabhapuram in I.A.Nos.1 and 2 of 2019 in O.S.No.191 of 2016 dated 24.01.2020 and set aside the same.

For Petitioner : Mr.K.P.Narayanakumar
in both CRPs.

COMMON ORDER

The petitioner is the plaintiff. He filed a suit for permanent injunction in O.S.No.191 of 2016 on the file of the Principal District Munsif Court, Padmanabhapuram. During pendency of the suit, he filed two applications, one is to reopen the hearing and the another one is to amend the plaint. The said applications were dismissed by the trial Court. Challenging the said orders, the petitioner/plaintiff has filed the present Civil Revision Petitions.

2.The learned counsel for the petitioner would submit that the petitioner has derived title to the 'A' schedule property through the settlement deed dated 04.08.2010 and the 'B' schedule property is the pathway. The suit 'A' schedule property cannot be enjoyed without using the suit 'B' schedule property. Therefore, an Advocate Commissioner was appointed to note down the physical features of the suit properties and the Advocate Commissioner has also noted down the physical features and filed the report. Thereafter, the petitioner filed the present application to amend the plaint. The trial Court failed to consider the nature of the suit properties and also failed to consider that the suit 'B' schedule property is a pathway to lead the suit 'A' schedule property and the petitioner is not in a position to enjoy the suit 'A' schedule property without using the suit 'B' schedule property. Therefore, the order passed by the trial Court is liable to be set aside.



3. Heard the learned counsel for the petitioner and perused the entire materials placed before the Court.

4. Admittedly the petitioner filed a suit for bare injunction and during pendency of the suit, he filed an application to appoint an Advocate Commissioner and an Advocate Commissioner was also appointed to note down the physical features of the suit properties and he has also filed the report and plan. Even prior to commencement of the trial, the Advocate Commissioner inspected the suit properties and filed report, but, the petitioner has not taken any steps to amend the plaint and only after completing trial, the petitioner has filed the application to amend the plaint. The trial Court has elaborately discussed about the post amendment situation and cited various decisions and also elaborately discussed about the factual and legal positions of the case and ultimately dismissed the application. It is not in dispute that during pendency of the suit, an Advocate Commissioner was appointed and he inspected the suit properties and filed the report. However, the petitioner has not taken any steps to amend the plaint prior to commencement of the trial, but he filed the application to amend the plaint only after completing trial.

5. From a careful perusal of the entire records and also the order passed by the trial Court, this Court does not find any perversity in the orders passed by the trial Court. Therefore, under these circumstances, CRP(MD)No.464 of 2020 filed against the dismissal of the petition to amend the plaint is dismissed. In view of the dismissal of the said CRP(MD)No.464 of 2020, CRP(MD)No.463 of 2020 filed against the dismissal of the petition to reopen the case is also dismissed. No costs. Consequently, CMP(MD)No.2850 of 2020 is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Mj

To

The Principal District Munsif Court, Padmanabhapuram
+1 CC to Mr.K.P.NARAYANA KUMAR, Advocate (SR-12226[F] dated
18/03/2020)

CRP (MD)Nos.463 & 464 of 2020
17.03.2020