



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.2352 of 2019

and

M.P. (MD)No.12427 of 2019

WEB COPY

Raja Jeya Singh

: Petitioner / Plaintiff

.. Vs ..

1.Kaniraj

2.The Assistant Engineer,

T.N.E.B. Distribution II,

Thuckalay,

Having its office at Moolachal,

Thuckalay Village, Kalkulam Taluk,

Kanyakumari District.

: Respondents/ Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 03.10.2019 passed in I.A.No.830 of 2018 in O.S.No.247 of 2014 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Petitioner

: Mr.M.Saravanan

For R1

: No Appearance

For R2

: Ms.M.Parameswari

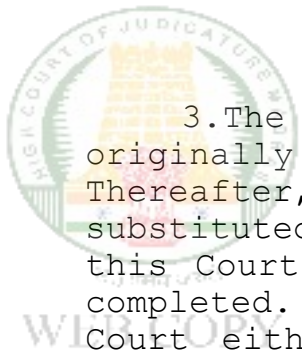
for Mr.S.M.S.Johny Basha

- - - - -

ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal District Munsif, Padmanabhapuram in I.A.No.830 of 2018 in O.S.No.247 of 2014, dated 03.10.2019.

2.After issuing notice to the respondents, the second respondent appeared through Mr.S.M.S.Johnny Basha, learned Counsel and on behalf of the first respondent, no one is filed vakalat. Hence, the petitioner was permitted to serve notice on the learned Counsel, who appeared before the lower Court for the first respondent herein along with the Court notice. Thereafter, the petitioner was directed to give paper publication in any of the Tamil Daily on or before 23.03.2020. The learned Counsel for the petitioner has filed proof of service for effecting paper publication on 23.02.2020 mentioning that the date of hearing would be on 23.03.2020.



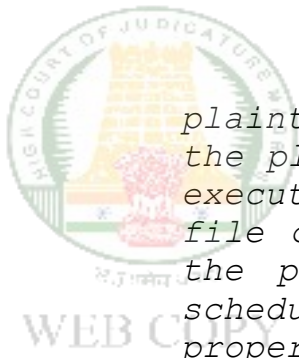
3.The notice issued to the first respondent through Court was originally returned with an endorsement "addressee absent". Thereafter, the notice was also served by affixure. In view of substituted service effected as per the direction of this Court, this Court proceed further on the basis that service of notice is completed. Since the first respondent has not appeared before this Court either by person or by engaging a Counsel, this Court is inclined to dispose of the case on merits.

4.The revision petitioner is the plaintiff in the suit in O.S.No.247 of 2014 on the file of the Principal District Munsif Court, Padmanabharapuram. The said suit was filed for permanent injunction restraining the defendants from trespassing into the suit schedule property by erecting electric poles and drawing electric lines through the schedule property to the house of first defendant and for mandatory injunction directing the defendants to remove the iron pipe erected by them in the suit schedule property.

5.The said suit was contested by the first respondent by filing written statement. During the pendency of the suit, the revision petitioner/plaintiff filed an application to amend the plaint in I.A.No.830 of 2018 based on certain events, that happened subsequent to the filing of the suit. From the records, the revision petitioner pointed out that an Advocate Commissioner was appointed in another suit filed by him against a third party in O.S.No.327 of 2014 before the same Court, to note down whether the property of plaintiff/revision petitioner has been encroached by the defendant in the suit in O.S.No.327 of 2014. It appears that the Advocate Commissioner has confirmed the encroachment by the defendant in the suit in O.S.No.327 of 2014 and hinted further encroachment by the first respondent in the present Civil Revision Petition. The report of the Advocate Commissioner was on 03.11.2018. Stating that the first respondent herein has encroached into some more portion of the suit schedule property, the revision petitioner/plaintiff filed the petition for amendment of plaint in I.A.No.830 of 2018.

6.In the affidavit filed in support of I.A.No.830 of 2018 in O.S.No.247 of 2014, the petitioner has stated as follows:

"During the pendency of the suit the 1st defendant remove the iron pipe erected by him in the plaint property and obtained electric connection to his small shed through the property of one Wilson. After that he started constructing a house in his property without having any plan approval from the competent authority. Then he shifted the old electric meter kept in the shed to his new house. The said house was inaugurated on 26.08.2018. After inauguration of the house, the 1st defendant constructed a compound wall on the south of his property by encroaching about 60 sq.feet of the property of the



plaintiff. This was confirmed at the time of measuring the plaint property by the Taluk Surveyor on 03.11.2018 in execution of the Commission work in O.S.No.327/2014 on the file of this Honourable Court. The encroached portion of the plaint schedule property is scheduled below as 'B' schedule. It is a part and parcel of 'A' schedule property."

7.In the counter affidavit opposing amendment petition, the first respondent herein has reiterated the contentions he has raised in the written statement filed in the main suit. In the counter affidavit, the first respondent herein has also stated further as follows:

"9.It is not correct to say that after the house warming ceremony this defendant constructed the compound wall by encroaching about 60 sq.feet. The construction of compound was is completed with the construction of the house. The defendant did not encroach any area from the suit property. The defendant constructed the compound wall based on the boundary stones put by the plaintiff during the time of sale deed executed by the plaintiff himself. The said boundary stones are at the spot. There is no encroachment stated in the measurement of the surveyor. This defendant did not know about the commission work. He has no knowledge about the commission work done on 03.11.2018. This defendant has know knowledge about the case of O.S.No.327/2014 of this Honourable Court. The B schedule property seeking through this amendment application is not correct."

8.Except denying the factum of encroachments, no specific plea is raised by the first respondent herein that the new construction was long prior to the filing of the suit. It is the specific case of the revision petitioner that the first respondent has started construction only after the suit. This suggests that the construction of house and the compound wall was subsequent to the suit and that therefore, the petition filed by the plaintiff/revision petitioner for amendment of plaint is proper and necessitated in view of the subsequent developments. The nature of amendment sought for will also indicate that the revision petitioner has not only sought to amend the prayer, but also by pleading certain facts narrating the events after the filing of the suit.

9.The lower Court dismissed the petition for amendment only on the ground that the revision petitioner has not stated about anything that prevented him to seek the amendment prior to the commencement of trial. In this case, there is nothing to suggest that there was no due diligence by the revision petitioner. The cause of action for filing the amendment petition arose only when



the construction was completed after filing of suit. There is no specific averment in the counter affidavit pointing out that the amendment could have been filed prior to the commencement of trial.

10. Since the stand of the revision petitioner is that the construction was during the pendency of the suit, that too, after the commencement of trial, the trial Court is not right in concluding that the amendment petition ought to have been made prior to the commencement of trial. In the present case, it is alleged that the first respondent has made encroachment long after the filing of the suit and hence, the petitioner is entitled to seek appropriate amendment in the plaint, so as to modify the prayer suitably taking note of subsequent events. In such circumstances, the order of lower Court dismissing the petition for amendment is not appropriate. Hence, the Civil Revision Petition is allowed and the order in I.A.No.830 of 2018 in O.S.No.247 of 2014 passed by the learned Principal District Munsif, Padmanabhapuram, dated 03.10.2019 is set aside and the application in I.A.No.830 of 2018 in O.S.No.247 of 2014 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

To

The Principal District Munsif,
Padmanabhapuram.

C.R.P. (PD) (MD)No.2352 of 2019
08.07.2020

CS (13.07.2020) 4P 2C