

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.(PD)No.611 of 2021

and

C.M.P.No.5260 of 2021

G.Dakshinamoorthy

...Petitioner

Vs

G.Ravi

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 22.02.2021 made in I.A.No.61 of 2021 in O.S.No.247 of 2018 on the file of the Principal District Munsif, Cuddalore.

For Petitioner : Mr.N.R.Rajagopalan

ORDER

The limited prayer sought for in this petition is to set aside the fair and decreetal order dated 22.02.2021 made in I.A.No.61 of 2021 in O.S.No.247 of 2018 on the file of the Principal District Munsif, Cuddalore.

2. The case of the petitioner is that he was working abroad and he is the sole bread winner of the family. The petition mentioned premises was purchased and constructed out of his hard earned income, which is evident from his mother's bank account. It is the further case of the petitioner that the respondent has not spent any amount towards the construction of the house in the said property. The petitioner and the respondent were living in two separate portions in the petition mentioned property, which was divided by a compound wall. Due to the dispute between the petitioner and the respondent, the respondent had tried to demolish the said wall, because of which, the entire foundation of the building rests and caused damage and detriment to the petitioner, which cannot be compensated by any means. Therefore, a suit was laid by the petitioner.

3. When the pending suit in O.S.No.247 of 2018, the present Interlocutory Application was taken up alleging that the respondent is trying to interfere with the petitioner's vacant wall in the front and back portion of the suit schedule property and therefore, the amendment to the plaint is required to prevent the respondent from interfering with the

petitioner's peaceful possession and enjoyment of the front and back portion of the suit property. The said interim application was resisted by the respondent on the ground that the petitioner is trying to enjoy the fresh cause of action by including the 2nd property in the schedule and which cannot be permitted at this belated point of time, more so, when the suit is ready for trial. It is the further case of the respondent that the affidavit of the petitioner does not give clear details as to the alleged interference and the said affidavit is the root cause and the present interlocutory application moved by the petitioner is only for the purpose of gaining time and therefore, the present application has to be dismissed.

4. The trial Court on considering the submissions advanced by either side held that the suit was laid for a declaration that the suit wall is a common wall and that the respondent should not be permitted to demolish the same. The suit is of the year 2018 and the present I.A.No.61 of 2021 has been filed in the year 2021 to amend the plaint to included the schedule two property relating to the vacant wall in the front and back portion of the property. Since the main case itself has been posted for trial in the year 2021 and the suit cause of action having arisen

in the year 2017, permitting the petitioner to enjoy the fresh cause of action by including the present schedule two would be against the interest of the parties and therefore had rejected the interim application against which, the present petition has been filed.

5. The learned counsel for the petitioner submits that the trial Court had failed to appreciate the fact that the interim application was filed only for the evidence of the parties under Order 6 Rule 17 CPC and without appreciating the said fact, had rejected the interlocutory application on the ground that the petitioner is trying to put forth the new cause of action, which is unsustainable.

6. A perusal of the order passed by the Court below reveals that the Court below has taken into consideration of the materials placed before it and has arrived at a substantive finding that the present application has been filed to put forth a new cause of action for which, the petitioner could very well file a fresh suit and allowing the interim application would only tell the complaint of the present suit. Further, the Court below has also held that the present grievance of the petitioner relates to

the front and back wall portion of the property, which is the subject matter of the suit and such being the case, allowing the petitioner to amend the plaint amounts to deprivation and delay the proceedings of the trial and on the said finding, the Court below rejected the Interlocutory Application.

7. On a careful consideration of the findings rendered by the Court below, this Court is not inclined to interfere with the order dated 22.02.2021 made in I.A.No.61 of 2021 in O.S.No.247 of 2018 on the file of the Principal District Munsif, Cuddalore. The Subject matter of the property and the issue raised in the previous suit and the interlocutory application are one and the same. Therefore, permitting the petitioner to amend the plaint will not be in the interest of either parties and it will only cause multiplicity of proceedings. Hence, the said ground raised by the petitioner has no merits and cannot be acceptable for the aforesaid reason.

8. Accordingly, the present civil revision petition stands dismissed.

No costs. Consequently connected Miscellaneous petition is also closed.

17.03.2021

Index: Yes/No
Speaking order/Non Speaking order
sbn

To

The Principal District Munsif,
Cuddalore.

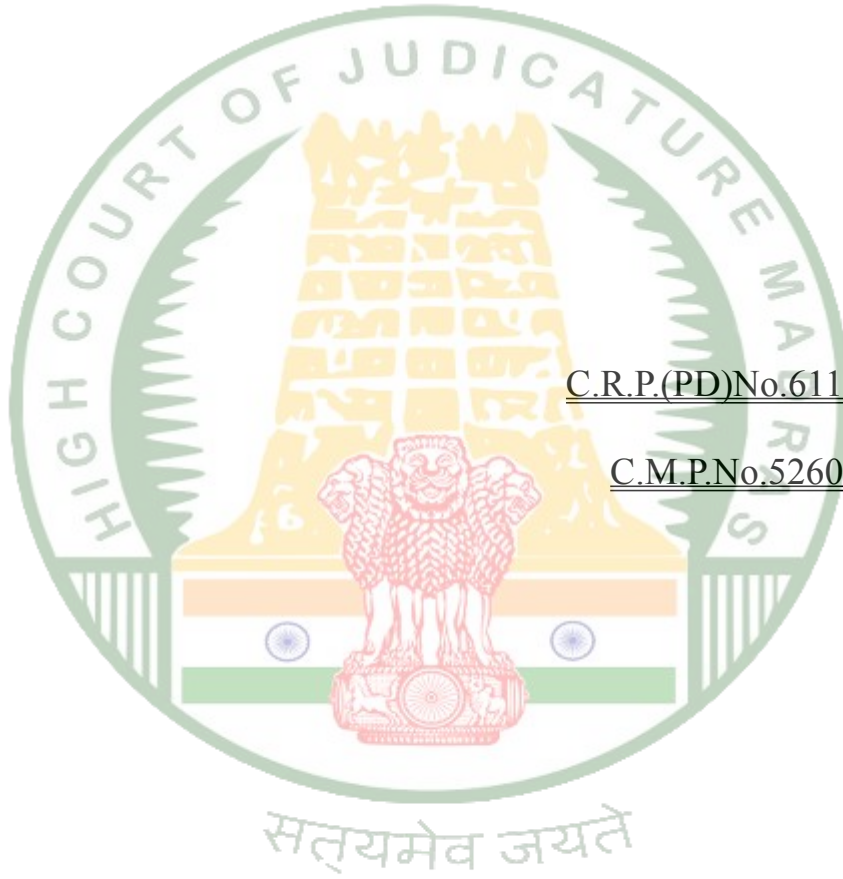


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