

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020

PRONOUNCED ON : 20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.1743 of 2016

CMP.No.9253 of 2016

(Through Video Conferencing)

Padmavathy

Petitioner

Vs

1. Karthikeyan

2. Thilagavati

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the order dated, 08.03.2016, passed in IA.No.504 of 2013 in OS.No.141 of 2010, by the District Munsif Court, Udthagamandalam.

For Petitioner : Mr.J.Franklin

For Respondent : No appearance

ORDER

1. This Civil Revision Petition has been filed, to set aside the order dated, 08.03.2016, passed in IA.No.504 of 2013 in OS.No.141 of 2010, by the District Munsif Court, Udthagamandalam.
2. The facts of the case, in a nutshell, are that the Plaintiff is the Petitioner herein and the Defendants are the Respondents herein. The suit was filed for permanent injunction, restraining the Defendants from continuing their

construction in the B-Schedule property and for mandatory injunction to clear the encroachment in the B-Schedule property. The Petitioner has filed the application to amend the plaint, by including the prayer for declaration of easement right to use the B-Schedule property to have ingress and egress to the A-Schedule property. Since the said application was dismissed by the impugned order, this Civil Revision Petition has been filed.

3. The learned counsel for the Petitioner has submitted that the proposed amendment is necessary to determine the controversy between the parties and for effective adjudication of the case and placed reliance on **2006 (2) CTC 24 (Lalitha vs. Selvaraj)**.
4. This court heard the learned counsel for the Petitioner and also carefully perused the materials placed on record.
5. On a perusal of the records, it is seen that originally the suit was filed for permanent injunction, restraining the Defendants from continuing their construction in the B-Schedule property and for mandatory injunction to clear the encroachment in the B-Schedule property. The Plaintiff has sought to amend the plaint, by including the prayer for declaration of Plaintiff's easement right to use the B-Schedule property to have ingress and egress to the A-Schedule property and for declaration that any assignment of land if any in respect of the B-Schedule property to the Defendants is null and void.
6. The amendment, which is sought to be carried out, by itself would show that it will change the nature and character of the suit and prejudice will be caused to the Defendants and it would complicate to decide the dispute

between the parties. Further, the report of the Advocate Commissioner is yet to be filed regarding the physical features of the B-Schedule property. Further, the amendment petition was filed belatedly. In such view of the matter, this Court is of the considered view that keeping in mind the above aspects, the court below has rightly declined to amend the plaint, by the impugned order, which is just and proper.

7. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

20.01.2021

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

To

The District Munsif Court, Udhagamandalam

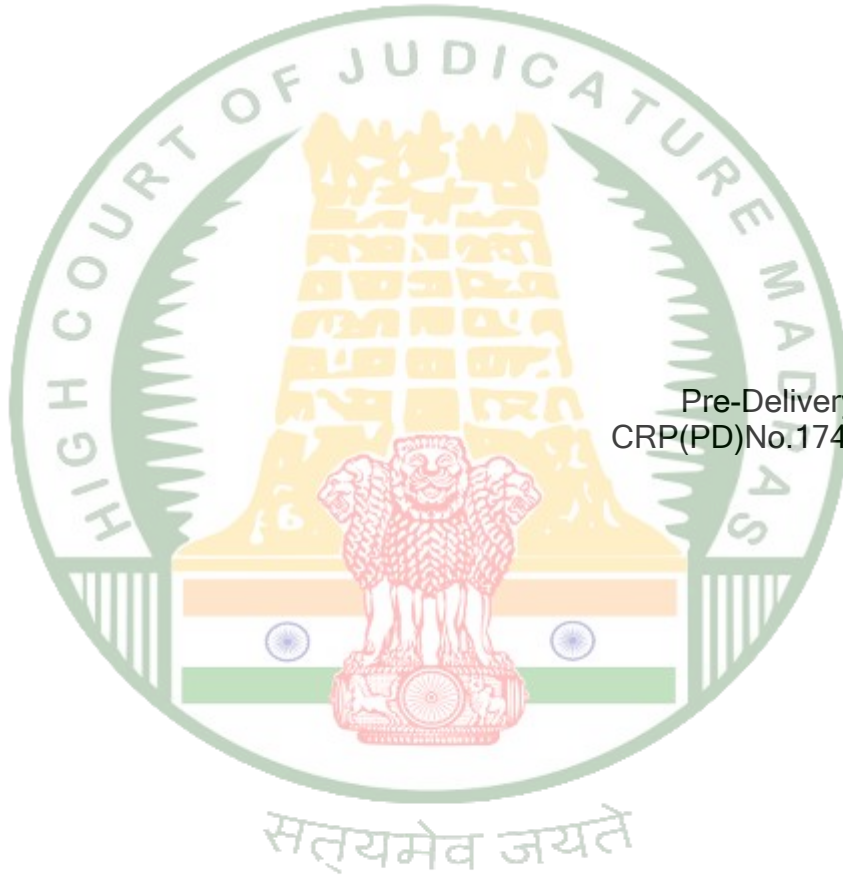


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A.A.NAKKIRAN, J.

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Pre-Delivery Order in
CRP(PD)No.1743 of 2016

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