

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.3602 of 2019
and C.M.P. No.23614 of 2019

Sankar

...

Petitioner /
Defendant

versus

Mohan @ Vasu

...

Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order dated 12.04.2019 in I.A.No.493 of 2018 in O.S.No.2347 of 2013 on the file of the learned I Additional District Munsif, Puducherry.

For Petitioner : Mr.L.Poovendran Perumal
For Respondent : Mr.S.Karthikei Balan

ORDER

This Civil Revision Petition is filed, challenging the order dated 12.04.2019 passed by the learned I Additional District Munsif, Puducherry in I.A.No.493 of 2018 in O.S.No.2347 of 2013.

2. The learned counsel for the petitioner submitted that, the suit in O.S.No.2347 of 2013 was filed by the respondent, seeking the relief of permanent injunction, restraining the petitioner from disturbing the respondent's peaceful possession and enjoyment of C and D schedule property; restraining the petitioner from making any construction in D schedule property; the respondent's right over the title to D schedule property and for costs.

3. Now, the respondent filed the amendment petition in I.A.No.493 of 2018 for amending the plaint, cause of action and valuation of prayer. This proposed amendment will change the entire nature and character of the suit. The amendment petition was opposed by the petitioner before the trial Court. However, without considering the opposition, the learned I Additional

District Munsif, Puducherry, allowed the amendment petition. Against the said order, this Civil Revision Petition is preferred.

4. The learned counsel for the respondent submitted that, the proposed amendment is necessitated in view of the averments made in the written statement filed by the petitioner and claiming the relief of easementary right and prohibitory injunction in respect of C schedule property by way of counter claim. Not only that, pending suit, the petitioner had completed the construction in D schedule property. Therefore, the proposed amendment, is absolutely necessary for bringing the case of the respondent in evidence. If the proposed amendment is not permitted, the respondent will not be in a position to give evidence with regard to the matters referred in the proposed amendment. The learned counsel for the respondent further drew the attention of this Court to the counter filed by the petitioner in the amendment petition admitting the construction made in D schedule property during the pendency of the suit.

5. Considered the rival submissions and perused the records.

6. It is seen from the affidavit filed in support of the amendment petition and the submissions made on behalf of the respondent that, after institution of the suit, the petitioner tried to construct in the D schedule property. The respondent claims absolute ownership in respect of C schedule property along with D schedule property. Petitioner claims easementary right in C schedule property and the counter claim is made in this regard. As rightly pointed out by the learned counsel for the respondent, the petitioner clearly admitted in the counter filed in the amendment petition that, pending suit, petitioner has made construction in the D schedule property. Therefore, this Court is of the considered view that, the proposed amendment is in conformity with the counter claim and to counter the counter claim made in the written statement and also to seek relief with regard to the construction made in the D schedule property. Therefore, only if the proposed amendment is allowed, the real issue in controversy between the parties can be decided. In such view of the matter, this Court finds no reason to interfere with the order of the learned I Additional District Munsif, Puducherry and the order dated 12.04.2019 made in I.A.No.493 of 2018 in O.S.No.2347 of 2013, is hereby confirmed.

7. Resultantly, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

20.10.2021

Speaking order / Non-speaking order
Index : Yes / No

sri

To

The I Additional District Munsif,
Puducherry.



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G.CHANDRASEKHARAN, J.

sri



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