

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.4366 of 2017

and

CMP.No.20766 of 2017

Selvaraj

..Petitioner

Vs.

Rajendran

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order passed in IA.No.1018 of 2017 in OS.No.46 of 2013 dated 30.10.2017 on the file of the Court of District Munsif, Sirkali.

For Petitioner

: Mr.A.Muthukumar

For Respondent

: Mr.M.V.Venkateseshan

ORDER

This civil revision petition is filed against the fair and decretal order passed in IA.No.1018 of 2017 in OS.No.46 of 2013 dated 30.10.2017 on the file of the Court of District Munsif, Sirkali, thereby allowing the petition for amendment of plaint to include the prayer of recovery of possession.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit for bare injunction in respect of the suit property. The case of the respondent is that he has leasehold rights in respect of the suit property. On 17.01.2013, the petitioner tried to put up fence in the suit property and successfully prevented him. Therefore, the respondent filed suit for permanent injunction. Whereas the case of the petitioner is that his property is situated at southern side of the suit property admeasuring 21 cents comprised in survey No.216/2. The petitioner filed written statement stating that if Surveyor is appointed to measure the suit property as well as the property owned by the petitioner herein, the problem will be solved. Accordingly, the surveyor was appointed and he filed his report on 20.09.2015. The report revealed that as per the leasehold right of the respondent herein, he is in possession and enjoyment of the property admeasuring 11 1/3 cents. Whereas the

document revealed for 12 cents. At the same time, the petitioner is in possession and enjoyment of the property admeasuring 20 $\frac{2}{3}$ cents. Whereas as per the document, he is entitled for 21 cents. Therefore, there is short of an extent of $\frac{2}{3}$ cents in respect of the respondent's property and there is a short of $\frac{1}{3}$ cents in respect of the petitioner's property. Therefore, the respondent filed petition in IA.No.125 of 2017 to scrap the report of the surveyor and prayed for appointment of new surveyor since he failed to mention encroached portion of the petitioner herein. The said petition was dismissed and thereafter the respondent filed petition for amendment of plaint to include the relief of recovery of possession in respect of $\frac{2}{3}$ cents by showing the said property as 'B' schedule in the plaint.

3. As rightly pointed by the learned counsel for the petitioner, already the respondent filed petition to scrap the report of the surveyor and the same was dismissed and against which the respondent did not prefer any revision before this Court. When it being so, the respondent is not entitled for any relief in respect of recovery of possession, when the main suit is filed for bare injunction. If pending the suit, the petitioner encroached some portion of the suit property, the

respondent can very well file a petition for amendment to include the prayer of recover of possession. The respondent filed suit for bare injunction and subsequently pleaded that the petitioner attempted to encroach the portion of the suit property. In fact on the request of the petitioner, surveyor was appointed and surveyed the suit property as well as the property of the petitioner herein and filed his report. Therefore, the prayer of recovery of possession cannot be decided on the basis of the surveyor's report.

4. The respondent failed to plea about the extent of the encroachment in the plaint and he was not aware of the extent of the property available with him. Further, there is no allegation that the petitioner encroached some extent of the property. Therefore, the amendment cannot be allowed to include the prayer of recovery of possession.

5. In view of the above discussion, this civil revision petition is allowed and the order passed in IA.No.1018 of 2017 in OS.No.46 of 2013 dated 30.10.2017 on the file of the Court of District Munsif, Sirkali is set aside. The trial court is directed to dispose of the suit

within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

15.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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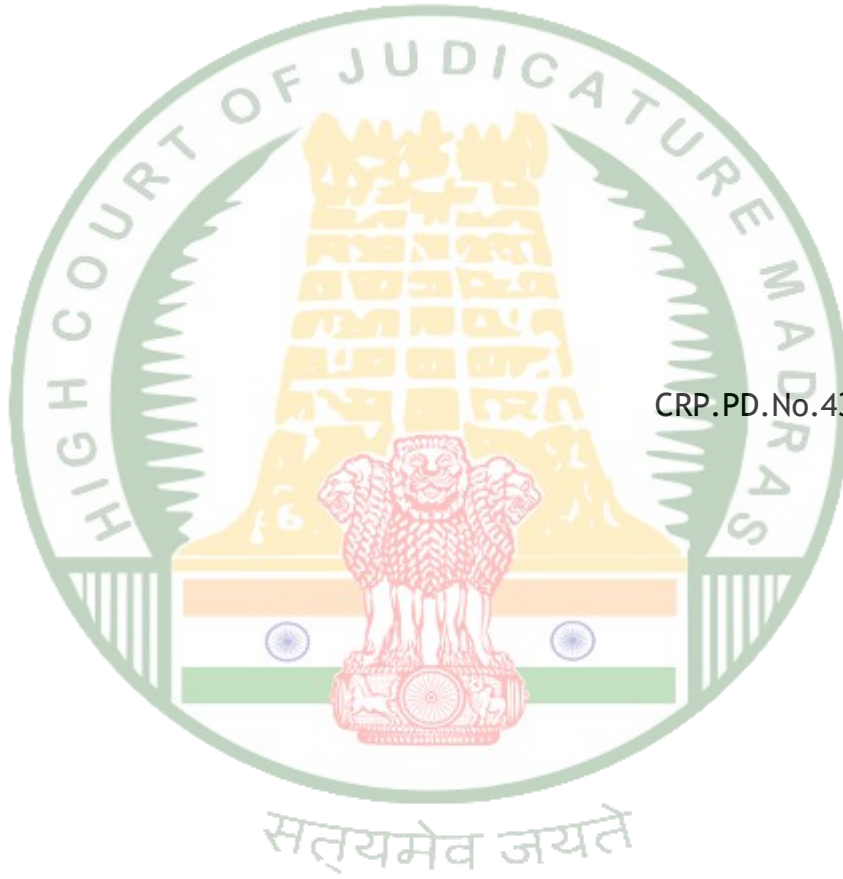
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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif,
Sirkali.



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