



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD) (MD) No.812 of 2020

and

C.M.P.(MD) No.5543 of 2020

K.Periyalwar

.. Petitioner/Petitioner/
Plaintiff

-vs-

1.K.S.Mohameed Rafi

2.B.Ashok

.. Respondents/Respondents/
Defendants

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 05.10.2020 made in I.A.No.439 of 2019 in O.S.No.288 of 2009 on the file of the District Munsif Court, Thirumangalam.

For Petitioner

: Mr.PT.S.Narendravasan

ORDER

The plaintiff is before this Court challenging the order dated 05.10.2020, passed by the learned District Munsif, Thirumangalam, dismissing his application in I.A.No.439 of 2019 in O.S.No.288 of 2009 to amend the plaint.

2.The facts in brief, which are necessary to dispose of this revision, are set out hereinbelow:-

2.1.The plaintiff had filed the suit in O.S.No.288 of 2009 for an injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the property, which is more fully described in the suit schedule.

3.The plaintiff's case is that he had purchased the suit property from one Nallathambi under a registered Sale Deed dated 17.06.2008. It is his contention that the defendants, by fabricating documents, are interfering with his peaceful possession and enjoyment of the suit property.



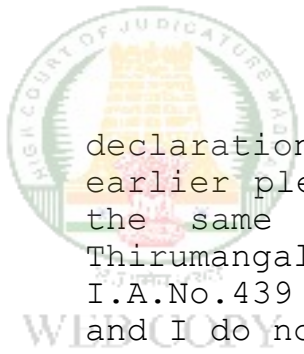
4.The 2nd defendant had filed a written statement *inter alia* contending that an extent of 42 cents comprised in S.No.203/1B was purchased by one Ayyasamy from Kali Chettiyar under a registered Sale Deed dated 28.08.1981. In the Sale Deed dated 28.08.1981, there was a discrepancy in the Eastern boundary, which was subsequently rectified on 09.11.1982, by a rectification deed in favour of the said Ayyasamy by the said Kali Chettiyar. Thereafter, Ayyasamy had divided the lands into five plots and Plot No.1 was sold to one Pandi and his wife from whom, one T.Chandra had purchased the property on 28.10.1988. The said T.Chandra, in turn, had executed a general Power of Attorney in favour of one P.Subbulakshmi on 06.06.2005 in respect of Plot No.1. Thereafter, Ayyasamy had sold the remaining plots, that is, Plot Nos.2 to 5 to the said P.Subbulakshmi under a Sale Deed dated 07.03.1990. It is from the said Subbulakshmi, the 2nd defendant had purchased the entire extent of 42 cents. Except for the 2nd defendant, no other person has right to the extent of 42 cents comprised in S.No.203/1B. The remaining extent in S.No.203/1A was purchased by one G.S.Lakshmanamoorthy from one Kaluvathevar.

5.It is the case of the defendants that the plaintiff's property and the defendants' property are situate 100 feet away from each other and between the two lands, the lands comprised in S.No.202/1A and another extent of 15 cents is situate. Therefore, it was the contention of the defendants that there was no scope for their interfering with the plaintiff's possession and the allegations contained in the plaint are totally false.

6.The plaintiff had come forward with the impugned application, when the suit was posted for arguments, seeking to amend the plaint to add the relief of mandatory injunction. The said application was objected to by the defendants, who would submit that even in the written statement, the extent of the compound wall had been set out in a great detail despite which, no steps had been taken to amend the plaint. Now, seven years after the filing of the written statement, the present application has been filed and it should, therefore, be dismissed.

7.The learned District Munsif, Thirumangalam, dismissed the said application stating that it is a post trial amendment and one which changes the very character of the original suit as well as the cause of action therein. Aggrieved by the same, the plaintiff is before this Court.

8.The plaintiff had filed the original suit on the basis that his possession of the suit property was being disturbed by the defendants and the suit property has been described as the vacant site bearing Plot No.9. Nowhere in the plaint, had the plaintiff stated that there was any obstruction put up by the defendants. Now, by virtue of the amendment, the plaintiff is seeking to have a



declaration and a mandatory injunction relief on the basis of the earlier pleadings and cause of action. Being post trial amendment, the same cannot be ordered and the learned District Munsif, Thirumangalam, has rightly dismissed the said application in I.A.No.439 of 2019 in O.S.No.288 of 2009, by order dated 05.10.2020, and I do not find any reason to interfere with the same.

9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The District Munsif, Thirumangalam.

C.R.P. (PD) (MD) No.812 of 2020

Dated: 03.12.2021

ARK(CO)

MGJ(30.12.2021) 3P 2C