



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (PD) (MD) No.1961 of 2014

and

MP (MD) No.1 of 2014

WEB COPY

C.Ayyanar

... Petitioner/Petitioner/Plaintiff

-vs-

1. Maharajan
2. Durai @ Periyadurai
3. Murugan
4. Sivakumar
5. Sekaran
6. Pullan Servai
7. Kannan
8. Palani

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India , to set aside the fair and decreetal order dated 16.07.2014 passed in I.A.No. 98 of 2014 in O.S.No.81 of 2010 on the file of the District Munsif Court, Nilakottai, Dindigul District by allowing this Civil Revision Petition.

For Petitioner : Mr.B. Babu

For Respondents :

R1 and R3 Mr.M.P.Senthil

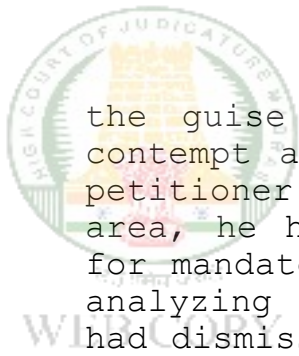
R2 : Mr.S.Ramalingam

R4 to R8 : M/s. Nithyarajalaxmi

O R D E R

This petition has been filed to set aside the fair and decreetal order dated 16.07.2014 passed in I.A.No. 98 of 2014 in O.S.No.81 of 2010 on the file of the District Munsif Court, Nilakottai, Dindigul District

2. The learned counsel for the petitioner would submit that the petitioner had filed a suit in O.S.No.81 of 2010 seeking for bare injunction. The petitioner had moved an application for ad-interim injunction and on the date of moving the petition the court had granted an order of interim injunction in favour of the petitioner. However in violation of the injunction order the respondent had put up an illegal construction measuring about extent of 10 x12 feet in



the guise of constructing a pial. The petitioner had moved a contempt application in I.A.No.461 of 2010 and further since the petitioner had to remove the illegal structure put up in that area, he had filed a petition seeking to amend the plaint seeking for mandatory injunction, whereas the trial Court without carefully analyzing the petition and the submission made by the petitioner, had dismissed the petition stating that the measurement of the pial was not stated and that by allowing the petition it would amount to accepting the allegation of the petitioner that the encroachment was constructed in the disputed area. He would further submit that the petition has been filed at the pre trial stage and the respondent has also got an opportunity of filing additional written statement either denying or disputing the allegations made by the petitioner. The learned Judge failed to note that by allowing the petition seeking for amendment it would not amount to admission by the Court, whereas the trial Court dismissed the petition to the detriment of the petitioner. He would further submit that the petitioner prefers to let in independent evidence to show that the construction was illegal construction put up subsequent to the interim injunction granted by the Court and that if the petitioner is not granted leave to amend the plaint, it would cause serious prejudice to the petitioner and the petition has been filed only in order to avoid multiplicity of proceedings. The learned counsel would further submit that there had been no delay on the part of the petitioner/plaintiff.

3. The learned counsel for the petitioner would also submit that the petitioner otherwise has to move another suit for removal of the encroachment, which would lead to multiplicity of proceedings and the trial has not commenced and in such circumstances in the interest of justice, the impugned order to be set aside and the petitioner has to be permitted to amend the pleadings.

4. The learned counsel for the respondents would submit that the suit was filed on 23.04.2010 and that the respondents filed written statement on 04.06.2010. Even in the written statement they have submitted that there were already constructions existing in the suit scheduled property and that the trial Court rightly finding that the petition has been filed only to delay the suit, had dismissed the petition.

5. Heard the learned counsel for the petitioner, respondent and perused the materials available on record.

6. The case is at the pre trial stage. It is the case of the petitioner/plaintiff that pending suit, the respondents have put up construction, the trial Court had dismissed the petition stating that there had been delay on the part of the petitioner in filing the petition. Further the trial court has also held that by allowing such application for amendment it would amount to admission that the construction was put up in the suit scheduled property.



7. This Court is of the opinion is that by allowing the prayer to amend the plaint itself would not amount to admission by the trial Court. Further it is also seen that the petitioner had shown the measurement of the construction put up which is about 10 x12 cm, whereas the trial Court had wrongly rendered a finding that the petitioner had not given the measurement.

8. In view of the above the order passed by the learned District Munsif, Nilakottai in I.A.No.98 of 2014 in O.S.No.81 of 2020 is set aside and the revision is allowed. No cost. Consequently connected miscellaneous petition is also closed. The petitioner / plaintiff has to let in independent evidence to prove his case. The respondents are at liberty to file additional written statements in respect of the amendment.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

aav

To:

1.The District Munsif,
The District Munsif Court,
Nilakottai, Dindigul District.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-27740[F] dated 01/09/2021)
C.R.P. (PD) (MD) No.1961 of 2014

and
MP (MD) No.1 of 2014
31.08.2021

MGJ(27.09.2021) 3P 3C