



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.2351 of 2019

N.Chelliah .. Petitioner/Petitioner/
Plaintiff
-vs-
1.T.Sivagnanam
2.Kalavathi
3.Arulmighu Uttamar Kovil,
Rep., by its EO, Uttamar Kovil,
Bhiksandarkovil-621 216. .. Respondents/Respondents/
Defendants

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 05.09.2019 made in I.A.No.3 of 2019 in O.S.No.379 of 2010 on the file of the District Munsif, Lalgudi.

For Petitioner : Mr.Raguvaran Gopalan
For RR1 & 2 : Mr.V.Maharajan
For R3 : No appearance

ORDER

The plaintiff, in the suit in O.S.No.379 of 2010 on the file of the District Munsif, Lalgudi, is the revision petitioner before this Court challenging the order dated 05.09.2019 in I.A.No.3 of 2019.

2.The said application was filed by the plaintiff under the provisions of Order 23 Rule 3 read with Section 151 of Civil Procedure Code to withdraw the suit with a liberty to file a fresh suit on the same cause of action.

3.The brief facts, necessary to appreciate the issue on hand, are as follows:-

3.1.The plaintiff had filed the suit in O.S.No.379 of 2010 against the defendants for a permanent injunction restraining the defendants from putting up any construction abutting the wall of the plaintiff in the 'A' Schedule property to its detriment and damage to the same thereby affecting the easement right of light and air to the plaintiff and for a mandatory injunction directing the defendants to maintain *status quo ante* as on 10.06.2010 and remove



the abutting construction made by the defendants in the 'B' and 'C' Schedule on the plaintiff's northern compound wall and in the space left by the plaintiff on the north of the compound wall nearly its western corner and for costs.

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4.The plaintiff's case is that the suit property, viz., the 'A' Schedule property was purchased by the plaintiff on 29.05.1989 and thereafter, a house was constructed thereon in which, the plaintiff was residing without any interruption. The 1st and 2nd defendants, who are husband and wife, were the plaintiff's neighbors on the northern side of the property. The 1st defendant had insisted on the plaintiff raising a compound wall on the northern side of his property, when he was working at Pudukkottai. Since the plaintiff could not frequently come over to the suit property to supervise the construction, he had requested the 1st defendant to help him with the construction of the wall by supervising the contractor. The 1st defendant, taking advantage of the situation, pushed the compound wall two feet into the plaintiff's land and annexed the same to his property. The plaintiff came to learn about this later. The 1st defendant also removed the boundary stone and raised a pillar abutting the compound wall on the north-west corner and has also extended the sunshade of the newly constructed portion of the house towards the plaintiff's property and has raised the parapet wall to serve a balcony. A water tank has also been fixed therein.

5.The plaintiff would submit that the land, upon which the defendant had put up his construction, was a temple land and therefore, any construction put up was illegal. The plaintiff would also state that the construction that has been put up is very weak and feeble and likely to collapse and therefore, the construction has to be demolished. The plaintiff would also submit that he had brought the illegal construction to the notice of the Commissioner, HR & CE vide his letter dated 04.09.2010. The plaintiff, unable to prevent the activities of the defendant, has come forward with the above suit.

6.The defendants had entered appearance and denied the allegations contained in the plaint.

7.Pending trial, the impugned application was filed by the plaintiff to withdraw the suit with liberty to file a fresh suit.

8.In the affidavit filed in support of the said application, the plaintiff would submit that he has now been advised to seek recovery of possession, since the prayer for mandatory injunction alone will not serve his purpose. Therefore, the present application has been filed.

9.The 1st defendant by way of his counter resisted the application *inter alia* contending that the application was



misconceived and the relief claimed is clearly barred by limitation. That apart, even at the time of the filing of the suit, the plaintiff was very well aware that he ought to have asked for the recovery of possession and the application, filed nearly nine years after the filing of the suit, is not maintainable.

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10.The learned District Munsif, Lalgudi, on hearing the both parties, allowed the application only with reference to the withdrawal of the suit, but refused to give the liberty to file a fresh suit, since the learned Judge felt that the application seeking liberty to file a fresh suit for recovery of possession would amount to reviving an already time barred relief. Challenging the same, the revision petitioner is before this Court.

11.Heard the learned counsel for the parties.

12.A reading of the plaint would clearly indicate that even on the date of the filing of the suit, the defendants had already encroached into the property of the plaintiff and constructed a compound wall inside the plaintiff's property. That apart, construction has also been put up in his portion along side the property of the defendant. Therefore, even on the date of the filing of the suit, the defendants had encroached on to the plaintiff's property and the cause of action for seeking recovery of possession had been asked at the time of filing of the suit itself. The petitioner has kept quiet till the year 2019 to take steps to file a suit for recovery of possession. The suit if filed now, would clearly be barred by limitation. In order to circumvent the same, the impugned application had been taken.

13.In view of the above, I do not find any reason to interfere with the well considered order dated 05.09.2019, passed by the learned District Munsif, Lalgudi, in I.A.No.3 of 2019 in O.S.No.379 of 2010. Consequently, this Civil Revision Petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

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 Court, Lalgugi.

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-38233[F] dated 10/12/2021)

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C.R.P. (PD) (MD) No.2531 of 2019

Dated: 09.12.2021

NSN (CO)

KB (30.12.2021) 4P 3C