



C.R.P(PD).Nos.494 & 495 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).Nos.494 & 495 of 2022
and C.M.P.Nos.2595 & 2601 of 2022

1.N.K.Gopi
2.G.Ranjitha
3.N.G.Rajendran
4.N.G.Ravindran

... Petitioners in both C.R.Ps.

..Vs..

1.K.Kumarandoss
2.K.Gajalakshmi
3.K.Murugandoss
4.K.Rajalakshmi

... Respondents in both C.R.Ps.

Common Prayer:- Civil Revision Petitions are filed under Article 227 of Constitution of India, to set aside the orders dated 17.09.2021 and 27.08.2021 passed in I.A.No.2 of 2021 in O.S.No.5981 of 2018 and I.A.No.2 of 2019 in O.S.No.5981 of 2018 on the file of the I Assistant City Civil Court, Chennai.



C.R.P(PD).Nos.494 & 495 of 2022

In both C.R.Ps.

For Petitioners : Mr.R.S.Rajesh

For Respondents : Mr.A.Arun Babu for R1
No appearance for R2

COMMON ORDER

These Civil Revision Petitions have been preferred challenging the orders of the learned I Assistant Judge, City Civil Court, Chennai dated 17.09.2021 and 27.08.2021 made in I.A.No.2 of 2021 in O.S.No.5981 of 2018 and I.A.No.2 of 2019 in O.S.No.5981 of 2018.

2.The revision petitioners are the defendants. The respondents 1 and 2/plaintiffs have filed a suit for permanent injunction. During the pendency of the suit, an application was filed by the plaintiff in I.A.No.2 of 2021 for amending the plaint for adding the relief for mandatory injunction to remove the alleged encroachment. Another application was filed in I.A.No.2 of 2019 once again to amend the plaint for including the prayer for declaration as well and both the applications were allowed. Aggrieved over that, the defendants/petitioners have filed these revision



3.The learned counsel for the petitioners submitted that the particulars of the amendment for which the applications were allowed are just contrary to the allegation of easement; the learned trial Judge, without considering the impact and changing the entire nature of the suit, allowed the same. In support of his contentions, he relied on the following judgments of this Court:

“(i)1995-2-L.W.875 [Thangamuthu Vs. K.Vijayalakshmi and another]

(ii)AIR 1976 Mad 282 : (1976) 1 MLJ 161 [Angammal Vs. Muthupechiammal and another]”

4.The learned counsel for the first respondent submitted that even though the suit was first filed for relief of permanent injunction on the basis of easementary right for light and air, during the pendency of the



C.R.P(PD).Nos.494 & 495 of 2022

suit, the defendants are stated to have encroached the property in question and put up constructions on the space let out by the plaintiffs as well as for the defendants for the thorough passage of air and light.

5.Since the damage was to the extent of denying the very entitlement of the plaintiffs over the breadth of his own space, it occasioned him to file another amendment to include the prayer for declaration as well. It is seen that the suit was originally filed for the relief of permanent injunction to restrain the defendants putting up construction by preventing the enjoyment of free light and air in the common place through 8 windows and 1 ventilator situated on the Eastern side of the respondents' house. If the parties had maintained status quo, there could not have been any occasion for including the further amendment on the basis of the alleged cause of action. The averments of the respondents/plaintiffs for seeking permission of the Court to include the first amendment is that the revision petitioners had started to put up construction in the vacant space belonging to themselves and the



C.R.P(PD).Nos.494 & 495 of 2022

respondents. So, in that context, it was quite essential for the respondent to come up with a prayer for amendment by including the prayer for mandatory injunction. Since the Court could not go into the merits of the averments at that stage, the first amendment was allowed.

6.During the second amendment, the petitioners prayed the relief of declaration and another relief of mandatory injunction to be included. It is not the contention of the revision petitioners that despite there is no alteration of the physical features of the suit property, the respondents have come out each time with a petition for amendment. Since causes of action seemed to have arisen for amendment, the learned trial Judge has allowed the same.

7.In the result, these Civil Revision Petitions are dismissed and the orders of the learned I Assistant Judge, City Civil Court, Chennai dated 17.09.2021 and 27.08.2021 made in I.A.No.2 of 2021 in O.S.No.5981 of 2018 and I.A.No.2 of 2019 in O.S.No.5981 of 2018, are hereby



C.R.P(PD).Nos.494 & 495 of 2022

confirmed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

15.07.2022

vkr

Index:Yes No

Speaking Order:Yes/No

To

- 1.The I Assistant Judge,
City Civil Court, Chennai.
- 2.The Section Officer,
VR Section, Madras High Court,
Chennai.

R.N.MANJULA,J.



WEB COPY



C.R.P(PD).Nos.494 & 495 of 2022

vkrr

C.R.P.(PD).Nos.494 & 495 of 2022
and
C.M.P.Nos.2595 & 2601 of 2022

15.07.2022