



C.R.P.(PD)No.3985 of 2015
and M.P.No.1 of 2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3985 of 2015
and M.P.No.1 of 2015

S.R.Kumar

.. Petitioner

Vs.

1.P.Kamakshi

2.Usha

3.P.Subramanian

4.P.Madhavan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.08.2015 made in I.A.No.15635 of 2014 in O.S.No.3628 of 2002 on the file of the I Assistant City Civil Court, Chennai.



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For Petitioner : Mr.P.B.Balaji
For R1 : Ms.Ramya
for Mr.V.Baskaran
For R3 : Mr.M.Aravindan

ORDER

(The matter is heard through “Video-conferencing”)

Civil Revision Petition is filed against the fair and decretal order dated 13.08.2015 made in I.A.No.15635 of 2014 in O.S.No.3628 of 2002 on the file of the I Assistant City Civil Court, Chennai.

2. The petitioner is the plaintiff and one S.Pichai is the 1st defendant in O.S.No.3628 of 2002 on the file of the I Assistant City Civil Court, Chennai. Pending suit, the 1st defendant S.Pichai died and the respondents herein were brought on record as defendants 2 to 5. The petitioner filed the said suit for mandatory injunction to remove the construction of the wall illegally put up by the 1st defendant and respondents herein in front of the petitioner's house and for permanent injunction restraining the



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respondents from putting up any further construction. The 1st defendant, 1st respondent and 3rd respondent filed separate written statements and are contesting the suit. Pending suit, the petitioner filed the present application in I.A.No.15635 of 2014 under Order VI Rule 17 of C.P.C. for amendment of the plaint to include 'B' schedule in the plaint.

3. According to the petitioner, he has not described the illegal construction put up by the respondents in an adequate manner. If the suit is decreed, it will lead to certain difficulties by executing the decree due to technicality. Though the description of the property is adequate, to certain persons, it may cause some ambiguity. In order to avoid the ambiguity, amendment is necessary and prayed for allowing the application.

4. The respondents 2 and 4 filed separate counter affidavits and opposed the said application and stated that amendment sought for is a



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new cause of action for the new property, which is not available at the time of filing suit. It will change cause of action of the property and the present amendment is not for any clarification or misspelling any ambiguity. The present amendment is enlarging the scope of the suit. The 4th respondent specifically stated that the suit is of the year 2002 and the amendment now sought for is barred by limitation and prayed for dismissal of the said application.

5.The learned Judge considering the averments in the affidavit, counter affidavits and plaint, dismissed the application holding that amendment sought for introduces new cause of action and the same is barred by limitation.

6.Against the said fair and decretal order dated 13.08.2015 made in I.A.No.15635 of 2014 in O.S.No.3628 of 2002, the petitioner has come out with the present Civil Revision Petition.



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7.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 and 3 and perused the entire materials on record.

8.From the materials on record, it is seen that the petitioner has filed the suit for mandatory injunction to remove the construction of the wall illegally put up by the respondents in front of the petitioner's house and for permanent injunction restraining the respondents from putting up any further construction. Subsequently the petitioner has filed present I.A. for amendment of plaint to include the 'B' schedule property. A reading of amendment sought for now shows that the petitioner is seeking removal of brick wall and fencing. In the plaint, the petitioner has not stated anything about the fencing and there is no pleading with regard to fencing put up by the petitioner. The petitioner has only sought for removal of construction of wall and by including removal of fencing, he is introducing a new case. According to the learned counsel appearing



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for the petitioner, the fencing was put up after filing the suit. If such is the case, the petitioner ought to have filed application to amend the plaint itself to incorporate the fencing put up after filing the suit. Without any such pleading, the petitioner is seeking to include the relief of removal of fencing and is introducing a new cause of action. The learned Judge considering the entire materials on record, dismissed the I.A. There is no error in the said order of the learned Judge warranting interference by this Court.

9.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
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V.M.VELUMANI,J.

Kj

To

I Assistant Judge
City Civil Court, Chennai.

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