



CRP.No.3749 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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and

CMP.No.19801 of 2022

1.R.Ethirajan
2.E.Chandrammal
3.Nilavarasan
4.Dr.G.Chitramalli
5.Selva Elavarasan

... Petitioners

Vs.

1.G.Sasikala
2.G.Shoba

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned fair and decretal order dated 31.10.2022 in I.A.No.7 of 2022 in O.S.No.5094 of 2013 on the file of the XVI Assistant City Civil Court, Chennai.



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For Petitioner : Mr.S.Veeraraghavan

ORDER

This Civil Revision Petition is filed, challenging the order passed by the Court below allowing the amendment application filed by the respondents herein.

2. The respondents herein filed a suit for permanent injunction in O.S.No.5094 of 2013. Subsequently, the respondents filed an application in I.A.No.7 of 2022 seeking amendment of the plaint prayer to include the prayer for mandatory injunction.

3. In the affidavit filed in support of the amendment application, it is stated by the respondents that, subsequent to the filing of the suit, the petitioners herein made forcibly entry into the suit property in December 2021 and put up a construction. Hence, by way of the amendment, the petitioners wanted to include the necessary averments in the plaint regarding the entry by the petitioners.



Subsequent to the filing of the suit, the respondents also wanted to put up a construction. Therefore, the respondents filed an application for amendment for including the prayer of mandatory injunction directing the petitioners to remove the construction put up by them pending suit. The Court below allowed the said amendment application and aggrieved by the same, the defendants /petitioners are before this Court.

4. The learned counsel for the petitioners vehemently contended that the prayer for mandatory injunction without a prayer for recovery of possession is not at all maintainable. The learned counsel for the petitioners further submitted that the respondents/plaintiffs failed to prove their possession over the suit property. In an Interlocutory Application already filed by the respondents seeking injunction, the trial Court had given finding that the respondents failed to prove their possession and hence, having failed to prove their possession in an Interlocutory Application, it is not open to the respondents to convert the suit as one for mandatory injunction, which



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is already infructuous.

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5. As far as the contention of the learned counsel for the petitioners that the prayer for mandatory injunction is not maintainable without comprehensive prayer for recovery of possession, at the time of amendment application, the Court need not go into the question of tenability of prayer on merits.

6. The Court is only concerned with the question whether the amendment sought for is necessary to decide the real controversy in the suit. According to the respondents/plaintiffs, the petitioners/defendants entered into the suit property subsequent to the filing of the suit and put up a construction. Now, they wanted to remove the construction by way of including the prayer for mandatory injunction. The amendment is aimed at prevention of multiplicity of proceedings. It will also enable Court to decide the dispute between the



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parties in a comprehensive way. Therefore, I do not find any illegality or irregularity in the order passed by the Court below.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed. However, it is open to the learned counsel for the revision petitioners to file their additional written statement raising all their defence as against the newly added prayer.

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Index : Yes / No
Internet : Yes / No
dna

To

The XVI Assistant City Civil Court, Chennai.



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S.SOUNTHAR, J.

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