



C.R.P. No. 3847 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3847 of 2017
and
C.M.P. No. 17964 of 2017

A.Natarajan,
S/o. Late M.Ajjagowder

... Petitioner

Versus

A.Jayabalan,
S/o. Late M.Ajjagowder

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the Fair and decreetal order dated 10.07.2017 made in I.A.No.113 of 2017 in O.S.No.50 of 2016 on the file of District Munsif Court, Kothagiri.

For Petitioner : Mr.S.Sithirai Anandam

For Respondent : Ms.K.Swetha for
Mr.Srinath Sridevan



C.R.P. No. 3847 of 2017

ORDER

WEB COPY The Revision Petitioner is the defendant in the suit in O.S.No. 50 of 2016 on the file of District Munsif Court, Kothagiri filed by the respondent/plaintiff herein for the relief of permanent injunction restraining him not to cause any interference with regard to house property along with construction.

2. During the pendency of the suit proceedings, according to plaintiff, the defendant completed the construction. So, the necessity arose for the plaintiff to amend the prayer in the plaint seeking for mandatory injunction. Hence, he has filed an application in I.A.No.113 of 2017 under Order 6 Rule 16 and 17 of C.P.C. The said application was strongly objected by the defendant stating that once he filed the suit for permanent injunction, he is not entitled to change the relief. Considering the submissions of both sides, the trial judge held that during the pendency of the suit, the construction was completed with regard to first floor, which is a main issue in the suit and hence, the plaintiff filed the said application to amend the prayer to remove the construction by way of mandatory injunction, as such, is



C.R.P. No. 3847 of 2017

maintainable one. Accordingly, the said application was allowed.

Challenging the said findings, the defendant preferred this Civil Revision Petition.

3. The learned counsel appearing for Revision Petitioner submitted that at the time of filing of the suit, the plaintiff claimed the relief of permanent injunction and now he wanted to amend the prayer for mandatory injunction, which would change the entire character of the suit. Hence, he prayed to dismiss this Civil Revision Petition.

4. Heard and considered the rival submissions of learned counsel for petitioner as well as respondent and perused the records.

5. Considering the submissions of both sides and on seeing the facts, it reveals that the suit was filed seeking for permanent injunction, at that time, the defendant attempted to put up roof in the first floor. Hence, he has filed the suit with the prayer seeking for permanent injunction, but subsequently the entire construction was completed. So, the necessity arose



C.R.P. No. 3847 of 2017

for the plaintiff to amend the prayer in the plaint, which is justifiable in law.

If the amendment is not permitted, the legitimate right of plaintiff would be prejudiced, at the same time, the alleged amendment would not affect the nature of suit. Therefore, the findings of the learned trial judge are justifiable one, which needs no interference. Accordingly, this Civil Revision Petition is dismissed and the order passed by the trial court in I.A.No.113 of 2017 is confirmed. However, the suit is pending from the year of 2017, the trial court is directed to dispose the suit within a period of six months from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

10.10.2022

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

District Munsif cum Judicial
Magistrate,
Kothagiri.

4/5



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C.R.P. No. 3847 of 2017

T.V.THAMILSELVI, J.

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C.R.P.No. 3847 of 2017

10.10.2022