



C.R.P. (PD) No.3851 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. No.3851 of 2017
and C.M.P.No.17971 of 2017

Kuppan
S/o Elumalai Udayar

. . . Petitioner/Respondent/Defendant

Vs.

Devarasan
S/o Elumalai Udayar

. . . Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.09.2016 made in I.A.No.35 of 2016 in O.S.No.102 of 2014 on the file of the Additional District Munsif Court, Kancheepuram.

For Petitioner : Mr.R.Prem Narayan
For Respondent : Mrs.V.Srimathi

ORDER

This Civil Revision Petition has been filed, challenging the order dated 27.09.2016 in I.A.No.35 of 2016 in O.S.No.102 of 2014 on the file of the



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Additional District Munsif Court, Kancheepuram.

2.The revision petitioner herein is the defendant in the suit in O.S.No.102 of 2014. The said suit was filed by the plaintiff/respondent, for mandatory and permanent injunction, in respect of the suit property in Survey No.197/20B. As per the pleadings of the plaintiff, the defendant is the brother of the plaintiff and he is residing adjacent to the suit property and caused interference in the peaceful enjoyment of the plaintiff's property.

3.Denying the averments made in the plaint, the defendant filed written submissions.

4.During the pendency of the proceedings, the plaintiff filed an application under Order 26 Rule 9 read with 151 CPC in I.A.No.214 of 2014 for appointment of an Advocate Commissioner to measure the suit property and to identify the same and to note down the physical features of the suit property. The said petition was allowed by the Court below and the Advocate Commissioner also visited the property, measured the same and also submitted his report. Based on the Advocate



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Commissioner's report, the plaintiff filed an application under Order 6 Rule 17 of CPC in I.A.No.35 of 2016 to amend the plaint schedule by including B schedule with four boundaries and also jurisdictional value of the suit property; also include prayer of mandatory injunction, to demolish the construction in plaint B schedule property. The said amendment petition was strongly objected by the defendant, stating that the plaintiff alone encroached the property of the defendant and to fill up the lacunae, the plaintiff has filed such application, which cannot be entertained.

5.Considering the submission made on either side, the Trial Court allowed the said application, stating that the proposed amendment would not cause any hardship to the defendant and if at all, the defendant have any objection on the alleged amendment, he is entitled to file additional written statement.

6.Challenging the order of the Court below, the petitioner/defendant has preferred the present Civil Revision Petition.

7.The learned counsel for the petitioner/defendant argues that already the



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plaintiff come to the Court with specific boundaries of the suit property. But after filing of the Advocate Commissioner's report, he want to include another schedule of property as 'B' schedule with specific prayer of mandatory injunction, as it is not maintainable. Because, as per the Advocate Commissioner's report, the plaintiff encroached the property of the defendant and the Court below has erroneously permitted the plaintiff to amend the pleadings, as such is not maintainable and prayed to set aside the order passed by the Court below.

8.By way of reply, the learned counsel appearing for the respondent/plaintiff would submit that after filing of the Advocate Commissioner's report, he came to know that there is some discrepancy in the suit schedule, which needs amendment and hence, he filed the Interlocutory Application to amend the plaint. Further, the learned Trial Judge on proper appreciation of facts has rightly allowed the petition, which needs no interference at the hands of this Court and prayed to dismiss the Civil Revision Petition.

9.On perusal of records, it is seen that the plaintiff has filed the suit for



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permanent and mandatory injunction with regard to 'A' schedule property and after receipt of the Advocate Commissioner's report, he want to include the 'B' schedule, to that effect also he want mandatory injunction. But as per the written statement of the defendant, plaintiff alone caused encroachment and the same has to be proved by adducing oral and documentary evidence. Therefore, the Court below has rightly allowed the petition to amend the plaint, as such would not cause any hardship to the defendant and it will not change the nature of the suit. Therefore, the present Civil Revision Petition is not maintainable and the reason given by the Court below in allowing the petition to amend the plaint is justifiable.

10. Accordingly, this Civil Revision Petition stands dismissed, by confirming the order dated 27.09.2016 made in I.A.No.35 of 2016 in O.S.No.102 of 2014 on the file of the Additional District Munsif Court, Kancheepuram. However, the defendant is at liberty to file additional written statement and thereafter, the learned Additional District Munsif Court, Kancheepuram, is directed to dispose of the suit in O.S.No.102 of 2014 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is



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closed.

26.10.2022

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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To

- 1.The Additional District Munsif, Kancheepuram.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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T.V.THAMILSELVI,J.

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