



CRP(PD)(MD)No.180 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.180 of 2018
and C.M.P.(MD)No.784 of 2018

1. Thangaiyan
2. Sundararajan

... Petitioners

versus

Indira

... Respondent

Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 07.08.2017 made in I.A.No.619 of 2017 in O.S.No.907 of 2011 on the file of the III Additional District Munsif, Trichy.

For Petitioners : Mr.Raguvaran Gopalan

For Respondent : Mr.T.Lenin Kumar

ORDER

This Civil Revision Petition is filed against the order dated 07.08.2017 made in I.A.No.619 of 2017 in O.S.No.907 of 2011 on the file of the learned III Additional District Munsif, Trichy.



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2. The said interlocutory application in I.A.No.619 of 2017 in O.S.No.907 of 2011 was filed under Order 6 Rule 17 C.P.C. to amend the plaint that the subject wall on the northern side of the property is an exclusive wall of the plaintiff.

3. Earlier, the plaintiff, in her averments to the plaint, has stated that the subject wall on the northern side of the property is a common wall and the defendants are attempting to put up a new construction on the wall and if it is done so, the common wall will get weakened. The written statement was also filed and the suit is ripe for trial. At that point of time, the respondent/plaintiff has filed the above interlocutory application to amend the plaint that the subject wall on the northern side of the property is not a common wall and it is an exclusive wall of her. By referring the averments made in the plaint, the defendants also disputed the same. However, the trial Court, without considering the same, allowed the said application. Aggrieved over the same, the defendants are before this Court.



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4. The learned counsel appearing for the petitioners/defendants submits that the plaintiff, who has admitted that it is a common wall, has filed the said interlocutory application in order to drag on the proceedings further. If the application to amend the plaint is allowed, the defendants must be provided an opportunity to file an additional written statement to dispute that the subject wall is a common wall. It is the apprehension of the petitioners/defendants that if the defendants are not allowed to file a written statement, the plaintiff will further drag on the proceedings by filing another application to amend the relief for declaration and thereby, the suit will be further dragged on for several years.

5. The learned counsel for the respondent/plaintiff submits that it is a mistake committed by the previous counsel inadvertently. The subject wall on the northern side of the property is an exclusive wall of the plaintiff and the same can be established at the time of trial,



however, in the absence of any pleadings, the plaintiff may not be in a position to establish her case. Therefore, the trial Court has allowed the said application and there is no interference with the findings of the trial Court. The learned counsel further submits that the respondent/plaintiff is ready to co-operate for speedy trial and disposal of the suit in O.S.No.907 of 2011.

6. This Court considered the rival submissions made.

7. The plaintiff has admitted in the plaint that the subject wall on the northern side of the property is a common wall. Now, the plaintiff is taking a plea that the subject wall on the northern side of the property is an exclusive wall of her. It is further claimed by the plaintiff that the previous counsel has inadvertently made this mistake. The question, as to whether the subject wall on the northern side of the property is an exclusive wall of the plaintiff or not, shall be decided at the time of trial. Therefore, the trial Court has rightly allowed the said application.



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Hence, this Court is not inclined to interfere with the order of the trial and accordingly, the Civil Revision Petition is dismissed.

8. However, considering the grievance of the petitioners/defendants that by amending the plaint, the suit would be further delayed, this Court directs the trial Court, namely, the learned III Additional District Munsif, Trichy, to conclude the trial and dispose of the suit on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. The trial Court shall give an opportunity to the defendants to file an additional written statement for the amended plaint. Both the parties shall co-operate for the early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

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B.PUGALENDHI, J.

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To

1. The III Additional District Munsif,
Trichy.

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