



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.369 of 2018

and

CMP(MD)No.1647 of 2018

1.M.P.Murugesan

2.M.Vijayalakshmi : Petitioners/Respondents/Defendants

Vs.

T.R.Ramakrishnan : Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and executable order dated 06.11.2017 in I.A.No.318 of 2017 in O.S.No.134 of 2011, on the file of the Sub Court, Theni and set aside the order of status quo.

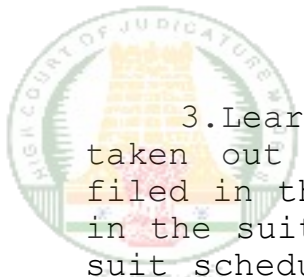
For Petitioners : Mr.R.Suriyanarayanan

For Respondent : Mr.Murugavel

ORDER

The respondent / plaintiff has filed the suit in O.S.No.134 of 2011 before the Sub Court, Theni, as against the petitioners / defendants for the relief of declaration and permanent injunction. He has also taken out an interlocutory application in I.A.No.318 of 2017 for amending the prayer by adding the relief of mandatory injunction and the same was allowed by the trial Court by order dated 06.11.2017. Aggrieved over the same, the petitioners have filed the instant civil revision petition.

2.Learned Counsel for the petitioners submitted that pending the suit, they have filed an interlocutory application in I.A.No.190 of 2012 for appointment of Advocate Commissioner and the same was also allowed. The learned Advocate Commissioner has filed a report along with the report of the Revenue Inspector as to the construction in the subject property. Only thereafter, the respondent has filed the application for amending the prayer.



3.Learned Counsel further submitted that the petitioners have taken out a specific plea in their written statement, which was filed in the year 2011 itself, that they have put up a construction in the suit schedule property and a building is in existence in the suit schedule property. Therefore, the respondent / plaintiff ought to have sought for the relief of mandatory injunction at that point of time itself. There is a limitation for mandatory injunction that it has to be sought for within a period of three years, whereas, this relief was sought for by the respondent beyond the limitation period, that too after the report of the learned Advocate Commissioner in the year 2017. Without considering these aspects, the learned Judge has mechanically allowed the application to amend the prayer and therefore, the learned Counsel prayed for interference.

4.Learned Counsel for the respondent / plaintiff submitted that the respondent has made an averment in the plaint itself that the petitioners / defendants are attempting to put up a construction in the suit schedule property. He has also lodged a police complaint and only thereafter, has preferred the suit. In the suit, he has also sought for an injunction restraining the petitioners / defendants from putting up any construction and a *status-quo* was also ordered by the trial Court.

5.This Court considered the rival submissions and also perused the available documents.

6.The respondent / plaintiff has raised a plea in the plaint itself that the defendants are attempting to put up a construction in the suit schedule property, for which, he claims to have lodged a police complaint as well, before preferring the suit. While preferring the suit, the respondent / plaintiff has also taken out an application for an injunction, restraining the defendants from putting up any construction. After the initiation of the suit, the respondent / plaintiff has prayed for amending the prayer by adding the relief of mandatory injunction, for the reason that the defendants, pending the suit, have put up construction in the suit schedule property. However, the defendants claim that the construction was put up much prior to the institution of the suit and the said fact has been averred in the written statement as well.

7.The trial Court has held that the existence of building in the suit schedule property was proved by the report of the learned Advocate Commissioner and that whether the construction was made pending the suit or before its initiation can be decided during the course of the suit and therefore, in order to avoid multiplicity of proceedings, the trial Court has allowed the application to amend the prayer. This Court does not find any error in the order of the trial Court warranting interference and as such, this civil revision petition stands dismissed. However, considering the fact that the



the trial and dispose of the proceedings, as expeditiously as possible, in any event, within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

gk

To

The Subordinate Judge,
Theni.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.MURUGAVEL, Advocate (SR-26866[F] dated 20/06/2022)

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