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CRP.No.327 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.327 of 2023

and

CMP.No.2743 of 2023

M.Krishnamoorthy

...Petitioner

Vs.

Takkar,
Arulmighu Pirattiamman Thirukkoil,
Chennimalai, Perundurai Taluk,
Erode District.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair Order and Final Order dated 07.12.2022 made in I.A.No.06 of 2021 in O.S.No.262 of 2012 on the file of the District Munsif Court, Perundurai by allowing the Civil Revision Petition.

For Petitioner : M/s.Shasi
for Mr.M.Guruprasad



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ORDER

This Petition has been filed by the Petitioner seeking to set aside the Fair and Final Order dated 07.12.2022 made in I.A.No.6 of 2021 in O.S.No.262 of 2012 on the file of the District Munsif Court, Perundurai.

2. It is the contention of the Learned Counsel for the Petitioner that the Petitioner had filed the Petition under Order VI Rule 17 and Section 151 of CPC in I.A.No.06 of 2021 in O.S.No.262 of 2012 on the file of the District Munsif Court, Perundurai, seeking amendment of the plaint for the relief of mandatory injunction as prayed in the Petition. However, the defendant resisted the same. After due enquiry, the Learned District Munsif, Perundurai dismissed the said Petition, as per Order dated 07.12.2022 on the ground of limitation.

3. It is the further contention of the Learned Counsel for the Petitioner that the Advocate Commissioner visited the suit property and filed a report stating that Respondent/Defendant had encroached and put up a shed in the suit property. Hence, the Petitioner prayed for removal of the said shed in



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the suit property.

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4. It is the further contention of the Learned Counsel for the Petitioner that the Shed had been put up blocking the access of the Petitioner / Plaintiff in reaching his house, however, the same was not considered by the Learned District Munsif, Perundurai. Hence, the Petitioner has come up with this Petition, seeking to set aside the dismissal Order passed by the Learned District Munsif, Perundurai made in I.A.No.06 of 2021 in O.S.No.262 of 2012 dated 07.12.2022.

5. On perusal of the Order dated 07.12.2022, it is evident that, on the basis of the objection raised by the Petitioner/Plaintiff stating that the Respondent/Defendant had put up a shed in the suit property, which is preventing the Petitioner/Plaintiff from reaching his house, the Advocate Commissioner had visited the property and filed a report as early as 2013,. While so, instead of filing the amendment Petition immediately, the Petitioner had left the Suit for dismissal. Subsequently, the Suit was restored and after restoration of the Suit, the Petitioner/Plaintiff filed Petition for reopen and recall and those Petitions were dismissed after due enquiry and



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the case was posted for arguments.

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6. At that stage, the Petitioner filed the Petition in I.A.No.6 of 2021 in O.S.No.262 of 2012 seeking to include the mandatory injunction in the Plaint relief which was resisted by the Respondent/Defendant and claimed that earlier suit filed by the Petitioner/plaintiff was dismissed after due Trial. While so, for the very same cause of action this subsequent Suit in O.S.No.262 of 2021 was filed by the Petitioner/Plaintiff only to prolong the proceedings.

7. On consideration of the submission made by the Learned Counsel for the Petitioner and on perusal of the Order passed by the Learned District Munsif, Perundurai, this Court is of the view that the Learned District Munsif, Perundurai had passed a well reasoned Order based on the available records. Hence, this Court is of the view that the Order passed by the Learned District Musnif, Perundurai, does not warrant interference of this Court.

8. Accordingly, this Civil Revision Petition is dismissed. No costs.



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Consequently, connected Miscellaneous Petition is closed.

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SATHI KUMAR SUKUMARA KURUP., J.

skt

To

The Learned District Munsif,
Perundurai.

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