



WEB COPY



C.R.P.(PD)No.1853 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.1853 of 2019
and CMP.No.12254 of 2019

N.George Kuppusamy

.. Petitioner

VS

1.A.Arputharaj

2.A.Devika

.. Respondents

Petition filed under Article 227 of the Constitution of India against the order and Decree dated 29.6.2018 passed in I.A.No.218 of 2018 in O.S.No.2237 of 2010 on the file of II Additional District Munsif Judge, Coimbatore.

For Petitioner : Mr.K.Myilsamy

For Respondents : No Appearance

ORDER

Originally the suit was filed for bare injunction. Subsequently, the defendants presented a written statement alleging that the plaintiff and one Lakshmi had entered into an agreement permitting a 3 feet passage



C.R.P.(PD)No.1853 of 2019

over the plaintiff's property. Since a fresh right was being claimed, an application was filed for amending the plaint seeking declaration of title with respect to item 2 of the property and for amending the Court fee portion of the plaint. The said application came to be dismissed stating that the main relief itself has been altered.

2. I heard Mr.K.Myilsamy, learned counsel appearing for the petitioner. The respondents, who have been served have not entered appearance.

3.A reading of the plaint shows that the plaintiff had based the claim for injunction on the basis of title. His title having been denied by the defendants, he has taken out an application to amend the prayer. The cause of action arose on the filing of the written statement by the defendants.

4.In *Ananthula Sudhakar v. P.Buchi Reddy (Dead) by LRs. & Ors. [2008 (4) SCC 594]*, the Supreme Court said where a suit for injunction is based on title and if the title is denied, it is open to the party to amend the plaint and seek for declaration of its title. If necessary, even for recovery of possession. Here is the situation, where originally the title of the plaintiff was not disputed. On filing of the written statement, a cloud has been created over the same by projecting an agreement.



C.R.P.(PD)No.1853 of 2019

Therefore, the plaintiff rightly moved an application for amendment. The frame of the suit nor the cause of action has been changed. Therefore, I am inclined to grant leave to amend. This civil revision petition is allowed and the order in I.A.No.218 of 2018 in O.S.No.2237 of 2010 on the file of the learned II Additional District Munsif, Coimbatore is set aside. No costs. Consequently, connected miscellaneous petition is closed.

27.07.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The II Additional District Munsif Judge,
Coimbatore.



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V. LAKSHMINARAYANAN,J.

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