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C.R.P.(PD)No.2036 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(PD)No.2036 of 2020

Sebastiammal

.. Petitioner

VS

Anbalagan

.. Respondent

Petition filed under Article 227 of the Constitution of India against the said fair and decreetal order dated 10.02.2020 passed by the learned Additional District Munsif, Cheyyar, in I.A.No.76 of 2020 in O.S.No.337 of 2003.

For Petitioner : Ms.Deepika .G
for Mr.S.Giritharan

For Respondent : Ms.G.Lavanya

ORDER

The suit in O.S.No.337 of 2003 filed before the learned Principal District Munsif Court, Cheyyar was originally presented for bare injunction. Thereafter, an Advocate Commissioner visited the suit property and submitted a report together with sketch. From the sketch, the plaintiff became aware that certain portion of the suit property had been encroached by the defendant and therefore, the prayer was amended



C.R.P.(PD)No.2036 of 2020

to that of mandatory injunction to remove the superstructure.

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2.It came to the notice of the plaintiff after filing an application under the Right to Information Act regarding the survey that, apart from the defendant, there were other encroachers also in the said property. Therefore, she moved I.A.No.76 of 2020 seeking permission for withdrawing the suit to present a fresh suit on the same cause of action. This was stiffly opposed by the defendant by filing a counter.

3.By an order dated 10.02.2020, the learned Additional District Munsif Court, Cheyyar permitted to withdrawal of the suit, but finding that there was no formal defect in the plaint, rejected the prayer for liberty to file a fresh suit on the same cause of action. Against which, the present revision has been presented.

4.Heard Ms.Deepika .G, learned counsel appearing for the petitioner and Ms.G.Lavanya, learned counsel appearing for the respondent and perused the records.

5.When the matter came up yesterday i.e., on 23.08.2023, I had put a question as to what is the reason the plaintiff wants to withdraw the suit. Ms.Deepika, represented that the reason being that there were other encroachers and consequently, the plaint and the schedule has to be amended accordingly. This Court informed her to get instructions



C.R.P.(PD)No.2036 of 2020

whether in the very same suit the plaintiff shall be willing to amend the
plaint and implead the alleged encroachers and proceed with O.S.No.337
of 2003.

6.Ms.G.Lavanya did not have any objection to this course of
action, consequently, the matter was listed today.

7.When the matter is listed today, Ms.Deepika represented that the
plaintiff is willing to amend the plaint, the schedule and also implead the
alleged encroachers and thereby bring the plaint in accordance with her
plan and prayer sought for. There being no formal defect in the suit,
though the order of the learned Judge is right in law, taking the overall
circumstance of the case and in order to shorten the litigation, I pass the
following order:-

(i) The order passed in I.A.No.76 of 2020 in O.S.No.337 of 2003
is set aside. The order permitting withdrawal is consequentially set
aside.

(ii) The plaintiff is granted liberty to amend the plaint to bring in
averments necessary as against the proposed parties. She is permitted to
implead the alleged encroachers and proceed with the suit in accordance
with law.



C.R.P.(PD)No.2036 of 2020

8. With the above directions, this civil revision petition is disposed

of. No costs.

24.08.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

vs

To

The Additional District Munsif,
Cheyyar.



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C.R.P.(PD)No.2036 of 2020

V. LAKSHMINARAYANAN,J.

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C.R.P(PD)No.2036 of 2020

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