



C.R.P.No.3756 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:
THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3756 of 2023

and

C.M.P.No.23384 of 2023

S.Kokila

... Petitioner

-Vs-

Thangam (died)

1.Ravichandran

2. Harikrishnan

3. Thulasikrishnan

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 29.08.2023 passed in I.A.No.8 of 2023 in O.S.No.89 of 2013 on the file of Sub-Court, Rasipuram.

For Petitioner

: Mr.B.Jawahar

ORDER

Challenging the impugned order passed in I.A.No.8 of 2023 in O.S.No.89 of 2013 by the learned Sub-Judge, Rasipuram, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.



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2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner filed a suit in O.S.No. 89 of 2013 against the defendants for the relief of mandatory injunction to remove the encroachment shown as EFGH in the plan and to restore the same by way of injunction and other consequential relief. The defendants appeared and contested the suit. During the pendency of the suit, the plaintiff filed an application to appoint an advocate commissioner to measure the property, in which, the Commissioner was appointed and he filed a report. As per the report, an extent of 112.32 sq.ft. was said to be encroached. So, the necessity arose for the plaintiff to amend the plaint by mentioning the specific extent of encroachment said to be encroached by the defendants. To that effect, she filed an application to amend the pleadings before the trial court, but the same was dismissed by the trial judge stating that after completion of trial, she filed the said application to amend the pleadings, as such is not acceptable one. At the most, she would have filed the said application before commencement of trial, thereby it was dismissed. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.



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4. The learned counsel for Revision Petitioner would submit that already he approached the court for removal of encroachment by way of injunction by mentioning the encroachment portion as EFGH without mentioning the extent of the said encroachment portion. After the appointment of advocate commissioner, by measuring the property, he came to know the specific extent, which said to be encroached by the defendants. So, he wanted to include the said extent in the plaint pleadings. But, the trial judge refused to accept the same stating that after commencement of trial, the said application was filed. Hence, he prayed to set aside the findings of the trial judge.

5. Admittedly, the plaintiff filed the said amendment application prior to the commencement of the trial as rightly observed by the trial judge. However, if opportunity is not given to the plaintiff for amending the pleadings by including specific extent in respect of encroached portion, in future, if the decree is executed, the exact encroachment portion is necessary and also to avoid multiplicity of proceedings, the amendment is just and necessary and by amending the pleadings, it would not cause any prejudice to the respondents/defendants. But, without applying the said legal proposition, the trial judge erroneously dismissed the application, as



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such is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.8 of 2023 in O.S.No.89 of 2013 is set aside and the said application is ordered to be allowed. The Revision Petitioner/plaintiff is permitted to proceed with the amendment and opportunity is to be given to the defendants to file their additional written statement in respect of amendment. Thereafter, the trial judge is directed to proceed with the trial as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

18.10.2023

Index : Yes/No
Speaking Order : Yes/No
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To

The Sub-Judge, Rasipuram.

T.V.THAMILSELVI, J.



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