



CRP No. 4374 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.11.2023

CORAM :

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

Civil Revision Petition No.4374 of 2023
and
CMP.No.26569 of 2023

M.G.Vasanthi

... Petitioner

Versus

S.Gowsalya

... Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order in I.A.No.5 of 2023 in O.S.No.884 of 2023 dated 13.09.2023 on the file of XVIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.M.Tamizavel

ORDER

The petitioner has filed this petition to set aside the order in I.A.No.5 of 2023 in O.S.No.884 of 2023 dated 13.09.2023 on the file of XVIII Assistant City Civil Court, Chennai.

2. Heard Mr.M.Tamizavel, learned counsel for the petitioner and

perused the materials available on record.

<https://www.mhc.tn.gov.in/judis>



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WEB COPY 3. The revision petitioner / plaintiff has filed an I.A.No.5 of 2023 in O.S.No.884 of 2023 praying to amend the plaint for mandatory injunction as stated that as per the Commissioner's Report the defendant has constructed a wall adjacently without leaving any space to the plaintiff's property by erecting the pillar to obstruct the air and ventilation which is enjoying for the past 34 years. Hence the revision petitioner needs to amend the prayer of mandatory injunction to remove the kitchen loft, pillars and other structures constructed by the petitioners.

4. On considering both side submissions, the learned trial Judge allowed and stating that the amendment needs by the plaintiff is relating to continuous cause of action of the suit in O.S.No.884 of 2023 and it is not separate cause of action. In order to decide the issue, involved in the suit as well as the consequential development made by the parties, it is just and necessary that the prayer for mandatory injunction is to be amended and it is made clear that the allegation of construction after the suit shall be decided after trial. Aggrieved the same the revision petitioner has preferred this revision.



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WEB COPY 5. On seeing the facts that, without proper knowledge, the petitioner put up such construction it has not been caused any interference to the plaintiff's property. But the learned trial Judge erroneously appreciated the Commissioner's Report and allowed the application against him. Considering the entire facts, based on the Commissioner's report it reveals that construction was made by the defendant, necessity arose for the plaintiff to amend the prayer by including mandatory injunction. Admittedly some construction was made by the defendant, but it has to prove at the time of trial, therefore this Court found that order passed by the learned trial Judge is confirmed, which need no interference.

6. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

27.11.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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T.V.THAMILSELVI, J.



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To

1. The XVIII Assistant City Civil Court, Chennai.
2. The Section Officer,
VR-Section, High Court of Madras.

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