



C.R.P.(MD).No.2725 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2725 of 2018

and

C.M.P(MD)No.11934 of 2018

Arumugam

... Petitioner/Defendant

-vs-

1.Badhurinnisha Bee

2.Ilimiya Begam

... Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of Civil Procedure Code, to set aside the order of the learned District Munsif, Thuraiyur, dated 27.06.2018 in I.A.No.1315/2017 in O.S.194 of 2015 and allow this revision petition.

For Petitioners : Mr.S.Muthukrishnan

For Respondents : No appearance

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.06.2018 in I.A.No.1315 of 2017 in O.S.No.194 of 2015, on the file of the District Munsif, Thuraiyur.



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2. The petitioner herein is the respondent/defendant before the Court below and the respondents herein are the petitioners/plaintiffs before the Court below. In spite of the name printed in the cause list, no one appeared on behalf of the respondents.

3. The learned counsel for the petitioner would submit that the respondents herein have filed a suit for permanent injunction in respect of passage and that during the pendency of the suit, they moved an application in I.A.No.1315 of 2017 for an amendment, praying mandatory injunction in respect of the alleged encroachment in the passage. The learned Judge allowed the amendment application on condition directing the respondents/petitioners/plaintiff to pay a sum of Rs.1,000/- to the petitioner/respondent on or before 28.06.2018, failing which, that petition shall stand dismissed automatically. Aggrieved with the said order, the petitioner/respondent has filed the present Civil Revision Petition.

4. The learned counsel for the petitioner further would submit that the alleged constructions were made prior to the filing of the suit, and no further constructions were made during the pendency of the suit and therefore,



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amendment sought for is without any basis. Hence, he prayed for allowing the Civil Revision Petition.

5. No appearance for respondent/plaintiff.

6. This Court has given anxious consideration to the submissions of the learned counsel for the petitioner.

7. The one and only submission made by the learned counsel for the petitioner is that there was no encroachment subsequent to the filing of the suit and that the so-called construction put up in the suit property was prior to the filing of the suit and therefore, the amendment application has been filed on the false reasons. Whatever may be the submission of the learned counsel for the petitioner, the amendment application has been filed prior to the commencement of trial and such amendment has been considered by the Court below with the background of alleged encroachment.

8. Even on a *prima facie* view, in the petition filed by the respondents herein for amendment, they stated that they came to know the alleged encroachment through the Commissioner report. It is pertinent to mention



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here that from the date of Commissioner report, this application has been filed within three years. Therefore, even on the ground of limitation, such an amendment cannot be rejected. Therefore, this Court is of the view that the very order of the Court below is based on a sound reasoning and this Court finds no justifiable material to interfere with the said order.

9. At this juncture, the learned counsel for the petitioner would submit that he must be given an opportunity to file a detailed additional written statement so as to counter the amendment made by the plaintiffs. As a matter of procedure, the petitioner has got every right to file an additional written statement.

10. In the result, this Civil Revision Petition is dismissed. Considering the fact that the suit is of the year 2015, the trial Court is expected to dispose of the suit as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

22.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

The District Munsif,
Thuraiyur,



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C.KUMARAPPAN,J.

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