



C.R.P.(MD).No.1776 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.1776 of 2018

and

C.M.P(MD) No.7782 of 2018

1. Sheik Abdul Kader

2. Ahammed Farida

... Petitioners/Respondents/Defendants

-vs-

Ahammed Farida Ammal

... Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.06.2018, passed in I.A.No.425 of 2018 in O.S.No.84 of 2014 on the file of the Additional District Munsif Court, Nanguneri.

For Petitioners : Mr.V.Meenakshisundaram

For Respondent : Mr.K.R.Laxman

ORDER

The present Civil Revision Petition has been filed by the petitioners/Defendants under Article 227 of the Constitution of India, against



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the fair and decretal order dated 22.06.2018, passed in I.A.No.425 of 2018 in O.S.No.84 of 2014 on the file of the Additional District Munsif Court, Nanguneri.

2. The defendants are the petitioners before this Court and they came up with a revision against the order passed by the learned trial Judge in the amendment application in I.A.No.425 of 2018, dated 22.06.2018. Before the trial Court, the respondent/plaintiff filed an application for amendment in respect of removal of the water pipe and sewage pipes affixed in the wall situated on the plaintiff's property. After elaborate enquiry, the learned trial Judge has allowed the application on 22.06.2018.

3. Aggrieved with the order, the learned counsel for the revision petitioners would submit that, the impugned order in the amendment application is the 5th amendment application. Out of them, some of the applications were dismissed as withdrawn. And I.A.No.903 of 2017, which is the previous amendment application to the impugned I.A.No.425 of 2018 was dismissed on merits on 22.09.2017. According to the revision petitioners, the amendment which is sought in the I.A.No.425 of 2018 is an identical



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amendment sought in the I.A.No.903 of 2017, which was ultimately dismissed by the learned trial Judge on 22.09.2017 on merits. Therefore, the main objection raised by the learned counsel for the petitioners is that the impugned amendment application is barred by the principles of *res judicata*.

4. At this juncture, the learned counsel for the respondent/plaintiff explained to this Court by referring to the amendments sought in the I.A.No. 903 of 2017 and the amendment sought in I.A.No.425 of 2018, that in the earlier amendment application in I.A.No.903 of 2017, the plaintiff has stated that the wall belongs to them, and therefore, they wanted for a declaration and for a mandatory injunction. But, in the subsequent present amendments sought in I.A.No.425 of 2018, the plaintiff restricted the claim only to a fixture in the wall and they admitted that the wall measuring about 20 feet 1.5 feet belongs to the defendants and what they wanted is only the removal of the fixture in the wall.

5. Therefore, this Court is very much satisfied that the subsequent amendment in I.A.No.425 of 2018 is not in respect of the wall. Therefore, the subsequent application is not barred by the principles of *res judicata*. Once



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this Court is satisfied that there is no *res judicata*, then there is no impediment to permit all the petition mentioned amendments. Therefore, the amendments sought for are liable to be allowed.

6. Therefore, this Court is of the firm opinion that the order of the learned trial Judge do not have any manifest error requiring interference by this Court. Therefore, this Civil Revision Petition is liable to be dismissed.

7. At this juncture, the learned counsel for the petitioners requests this Court to give liberty to raise all the defences before the trial Court. Accordingly, liberty is given to the parties to raise all the defences before the trial Court according to law. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

06.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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1. The Additional District Munsif Court,
Nanguneri.



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C.KUMARAPPAN,J.

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