



C.R.P.No.4632 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.4632 of 2023

Ambuja

...

Petitioner

Vs

1. Smt. Parvathamma @ Parvathi

2. Ramasamy Reddy

...

Respondents

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 17.10.2022 made in I.A.No.396 of 2018 in O.S.No.258 of 2017 on the file of the Additional Sub Court, Hosur and to allow the civil revision petition.

For Petitioner : Mr C. Prabakaran

For respondents : G. Ranjani,
for R1



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 17.10.2022 made in I.A.No.396 of 2018 in O.S.No.258 of 2017 on the file of the Additional Sub Court, Hosur.

2. The learned counsel for the petitioner submitted that the revision petitioner is the second defendant and the first respondent is the plaintiff and the second respondent is the first defendant in O.S.No.258 of 2017 on the file of the Additional Subordinate Court, Hosur. The first respondent/plaintiff had filed the said suit for declaration declaring the plaintiff's title over the suit property and for permanent injunction restraining the defendants from trespassing into the suit properties and not to disturb the peaceful construction of the plaintiff in the suit land till the disposal of the suit. Pending trial, the first respondent/plaintiff had filed an application in I.A.No.396 of 2018 under Order 6 Rule 17 of CPC to amend the plaint. The learned counsel further submitted that the said amendment application has been allowed by the Trial Court without considering the fact that the petition has been filed belatedly and



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the amendment puts forth a new case and there was no pleading in the plaint to that effect. Therefore, seeks to allow the revision.

3. The learned counsel appearing for the first respondent submitted that though the plaintiff had filed the suit for limited prayer of declaration and permanent injunction, only after the inspection of the Advocate Commissioner, it came to light that the petitioner/second defendant had encroached certain portion of the land by measuring South North 16.2 meters on the western side of the first respondent/plaintiff's land. Further, it is found that the petitioner/first defendant had constructed a wall in S.No.24/20B2 in that area. Therefore, to include the prayer of mandatory injunction to demolish the wall, the plaintiff necessarily has to file application to amend the plaint to adjudicate the dispute between the parties and the Trial Court rightly allowed the petition and seeks for dismissal of the revision.

4. Heard the learned counsel for the petitioner and perused the materials



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available on records carefully.

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5. The first respondent/plaintiff had filed the suit in O.S.No.258 of 2017 on the file of the Subordinate Court, Hosur for declaration declaring the plaintiff's title over the suit property and for permanent injunction restraining the defendants from trespassing into the suit properties and not to disturb the peaceful construction of the plaintiff in the suit land till the disposal of the suit. Pending trial, the first respondent/plaintiff had filed an application in I.A.No.396 of 2018 under Order 6 Rule 17 of CPC to amend the plaint and the same was allowed on 17.10.2022, against which the present revision has been filed by the revision petitioner, who is the second defendant in O.S.No.258 of 2017 .

6. On perusal of records, it is noticed that the Advocate Commissioner had inspected the suit property and measured the property in Survey No.24/20b1 and 24/20b2 and fixed the boundaries and filed the report on



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30.11.2017 along with rough sketch. According to the Commissioner Report, the defendant No.2, encroached certain portion of land by measuring South North 16.2 meter equal to 53 feet and width about 0.4 meter on the western side of the plaintiff's land. The plaintiff came to know about the illegal construction only on 31.11.2017 only after seeing the Commissioner Report. Therefore, she filed the application for amending the plaint to add the prayer for mandatory injunction to demolish the existing wall in Survey No.24/20B2 constructed by the 2nd defendant in order to adjudicate the dispute completely between the parties. Whether the plaintiff is entitled for the relief of mandatory injunction will be decided only at the fag end of the trial and hence, the Trial Court rightly allowed the said application. Hence, I find no infirmity or irregularity in the impugned order passed by the Trial Court and no ground for interference and I find no merit in this revision.



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V. SIVAGNANAM, J.

mrp

7. Accordingly, this Civil Revision Petition is dismissed. Consequently connected miscellaneous petition is closed. No costs.

23.02.2024

Index: yes/no
Internet:yes/no
mrp

To

The Additional Sub Court,
Hosur.

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