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C.R.P.(PD).No.1198 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1198 of 2021
and CMP.No.9245 of 2021

1.Chinna Ramasamy
2.Ramagounden

... Petitioners

vs.

Ramasamy

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 21.11.2019 made in I.A.No.1 of 2019 in O.S.No.323 of 2015 on the file of the District Munsif Court, Sankari, by allowing this Civil Revision Petition.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondent :Mr.P.Jagadeesan

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the amendment application filed by the



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petitioners seeking to include a prayer for mandatory injunction.

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2. The petitioners herein filed a suit for bare injunction. Even in the plaint it was admitted by the petitioners that they filed a suit for partition in O.S.No.68 of 2014 on the file of the Subordinate Court, Sankari and the suit was dismissed for default and he had filed an application to restore the same. After dismissal of the suit for partition, the respondent attempted to alter the physical features by putting up construction. Therefore, the petitioners said to have filed the present suit seeking injunction restraining the respondent from putting up construction pending disposal of the suit in O.S.No.68 of 2014 on the file of the Subordinate Court, Sankari.

3. Subsequently, the petitioners filed the present application for amendment of the plaint to include the prayer for mandatory injunction to remove the construction put up by respondent. According to the petitioners, the respondent completed construction of the building in the suit property in December 2017 and therefore, the main relief sought for in the suit had become infructuous. Therefore, the petitioners were constrained to file an



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amendment application to include the prayer for mandatory injunction to remove the construction put up pending the suit. The said application was resisted by the respondent herein on the ground that the main prayer in the suit itself had become infructuous even at the time of filing of the suit, therefore the present application for inclusion of the prayer for mandatory injunction need not be considered. It is admitted case, as per the plaint averment, the petitioners herein filed a partition suit in O.S.No.68 of 2014 on the file of the Subordinate Court, Sankari, the said suit was dismissed for default. Thereafter, the present suit was filed seeking injunction. In the prayer portion of the plaint, the petitioners sought for injunction restraining the respondent from putting up construction till the disposal of the suit in O.S.No.68 of 2014. When, admittedly, the suit in O.S.No.68 of 2014 was dismissed for default even at the time of filing of the plaint, the main prayer sought for in the suit appeared to be not maintainable even at the threshold. Therefore, the present amendment application filed by the petitioners seeking to include the prayer for mandatory injunction was dismissed by the Court below on the ground that the petitioners are not entitled to include the new prayer as the main prayer itself had become infructuous.



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4. I do not find any infirmity in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

09.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The District Munsif Court,
Sankari.



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S.SOUNTHAR, J.

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