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C.R.P.(PD).No.1862 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

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THE HON'BLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.1862 of 2024
and C.M.P.No.9787 of 2024

1.S.Kistan
2.S.Baskar

... Petitioners/Respondents/Defendants

-Versus-

1.C.Jayakumar
2.A.Ruthra Thandeeswaran

... Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 09.02.2024 passed in I.A.No.1 of 2023 in O.S.No.16 of 2012 on the file of the District Munsif Court, Sriperumbudur.

For the Petitioners : Ms.Hema Sampath
Senior Counsel
for Mr.R.Jeyaram

For the Respondents : Mr.L.Chandrakumar

ORDER

This Civil Revision Petition arises against the order passed by the learned District Munsif at Sriperumbudur, in I.A.No.1 of 2023 in O.S.No.16 of 2012



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dated 09.02.2024.

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2. O.S.No.16 of 2012 is a suit for declaration that the 'C' schedule mentioned property is a common passage to reach the 'A' and 'B' schedule mentioned properties. It also seeks mandatory injunction directing the defendants to demolish the compound wall constructed over the common passage, described in the 'D & E' schedule mentioned properties, and for the further relief of permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the common passage, running south to north, from north mada street to the plaintiffs' land.

3. The case of the plaintiffs' is that the 1st plaintiff had acquired the 'A' schedule mentioned property on 04.09.1967 and the 2nd plaintiff purchased the 'B' schedule mentioned property on 15.06.2005. On 02.12.2011, the defendants encroached upon the common passage and started construction. Immediately as the ingress and egress of the plaintiffs were obstructed, they came forth with the suit. Along with the plaint they moved an application in I.A.No.104 of 2012 seeking for interim injunction restraining the defendants from interfering with the ingress and egress over the 'C' schedule mentioned property, pending



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disposal of the suit. The application taken out for injunction, was allowed on

26.06.2014.

4. It is not in dispute that Civil Miscellaneous Appeal was preferred to the learned Subordinate Judge at Kanchipuram in C.M.A.No.6 of 2014, which was subsequently dismissed as withdrawn.

5. Pending suit, an application was taken in I.A.No.1273 of 2015 for appointment of an Advocate Commissioner to visit the suit schedule mentioned properties and to submit a report. The Commissioner also visited the property and had submitted his report, to which the Civil Revision Petitioners have also filed their objections.

6. Thereafter, pleading that the defendants have put up a construction over the 'C' schedule mentioned property on 04.07.2014, i.e., pending the application for injunction, a petition for amendment was taken out in I.A.No.1 of 2023. The plea of the plaintiffs' is that despite the order of injunction passed in the suit as well as in the W.P.No.25557 of 2014 dated 19.09.2014, the defendants proceeded with the construction and have obstructed the common



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passage. They sought to include certain averments regarding the developments that had taken place after the presentation of the plaint and sought for the relief of recovery of possession, after demolishing the existing superstructure that has been put up by the defendants.

7. The learned District Munsif, after receipt of the counter from the defendants allowed the application, against which, the present Civil Revision Petition.

8. Heard, Ms.Hema Sampath, Senior Counsel for Mr.R.Jeyaram, for the petitioners and Mr.L.Chandrakumar for the respondents.

9. The narration of the aforesaid facts would show that the plaintiffs have come forth before this Court with a specific plea that the suit 'C' schedule mentioned property is a common passage, which is being obstructed, by construction of a compound wall. The suit was presented in the year 2012 and the plaintiffs were also successful in obtaining an order of interim injunction. According to them, after the order of injunction had come into force, the defendants proceeded further and put up a superstructure, pending the suit.



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Hence, they sought for a prayer to remove the superstructure and necessary averments to support the same.

10. Either side will agree that the suit is still at the stage of pre-trial, i.e., the trial has not yet commenced. Being a pre-trial amendment, it requires a liberal consideration as the restrictive portion of Order 6 Rule 17 proviso is yet to kick in. The learned District Munsif had found that for a period of more than 6 years, the papers were available only before the Subordinate Court, Kanchipuram, which disabled the plaintiffs from moving an application for amendment and she has found that at the earliest possible opportunity, the plaintiffs moved an application seeking for the aforesaid reliefs.

11. I have to point out, it is not necessary for a plaintiff to seek for amendment to remove the superstructure, which has come up pending the litigation. Nonetheless, by of abundant caution, the plaintiffs have sought for the aforesaid amended reliefs. By granting the amendment, neither the cause of action nor the frame of the suit is changed. It continues to be a suit for declaration that the 'C' schedule mentioned property is a common passage. The learned District Munsif having exercised the discretion correctly, I do not find



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any necessity to interfere with the order. Nonetheless, since Ms. Hema Sampath would plead that the amendment is barred by limitation, it is always open to the defendant to raise such plea by way of additional written statement. Of course, if such a plea is raised, the Trial Court will frame an issue regarding the said issue and answer the same.

12. In the light of the above discussion, I do not find any reason to interfere with the order dated 09.02.2024 passed by the learned District Munsif, Sriperumbudur, in I.A.No.1 of 2023 in O.S.No.16 of 2012. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

19.08.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

Speaking / Non Speaking Order

To

The District Munsif, Sriperumbudur.

V.LAKSHMINARAYANAN, J.,



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