



C.R.P.(MD)No.651 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.651 of 2024

and

C.M.P.(MD)No.3263 of 2024

Manoharan

... Petitioner / Petitioner / Plaintiff

Vs.

Chinnathurai

... Respondent / Respondent / Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order in I.A.No.230 of 2023 in O.S.No.79 of 2013 dated 21.12.2023 on the file of the District Munsif Cum Magistrate Court, Papanasam and set aside the same by allowing the present civil revision petition.

For Petitioner : Mr.R.Rajaraman

For Respondent : Mr.A.Senthil Kumar

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ORDER

The plaintiff in O.S.No.79 of 2013 on the file of the District Munsif Cum Judicial Magistrate, Papanasam, Thanjavur District is the revision petitioner



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herein. The suit is for declaration, recovery of possession, mandatory injunction and permanent injunction. The plaintiff filed I.A.No.230 of 2023 for amending the suit schedule. The said I.A. was dismissed. Challenging the same, this civil revision petition came to be filed.

2.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of the revision. He submitted that the plaintiff had given proper and convincing reasons for the delay in filing the amendment application. He called upon this Court to set aside the impugned order and grant relief as prayed for.

3.Per contra, the learned counsel for the respondent submitted that the impugned order is well reasoned and that it does not warrant interference.

4.I carefully considered the rival contentions and went through the materials on record. The suit was instituted way back in the year 2013. The advocate commissioner was appointed on 17.02.2014. He submitted his report on 03.02.2015. He was cross examined on 04.02.2021. The case is now posted for arguments. At this stage, the present application had been filed. In the suit schedule, the petitioner has mentioned the extent of encroachment as



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1149 sq. ft. Now, the plaintiff wants to revise it as 1640 sq. ft. If the advocate commissioner's report furnished inspiration for the plaintiff to amend the plaint, the inspiration should have come long ago. There is absolutely no justification for such belated filing. Order VI Rule 17 of Civil Procedure Code clearly distinguishes between pre-trial amendments and post-trial amendments. To allow post-trial amendments, one has to satisfy what is known as “due diligence test”. In this case, the plaintiff has miserably failed in the test. That is why, the Court below dismissed the amendment petition. It has given solid and sound reasons for dismissing the application. Interference is not warranted. The civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.09.2024

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

The District Munsif Court,
Papanasam,
Thanjavur District.



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G.R.SWAMINATHAN, J.

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