



C.R.P.(MD)No.2676 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2676 of 2023

and

CMP (MD) No.13952 of 2023

Parameswari Spinning Mills (P)Ltd.,
Velayuthapuram village,
Panthalkudi Post,
Aruppukottai Taluk,
Tuticorin Main Road,
Virudhunagar District,
represented by its Director : Petitioner/Respondent/
Defendant

Vs.

T.A.S.Alagarsamy : Respondent/Petitioner/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and final order in IA No.5 of 2023 in OS No.223 of 2009, dated 12/09/2023 on the file Additional District Munsif Court, Aruppukottai.

For Petitioner : Mr.A.Sivaji

For Respondent : Mr.S.Selva Aditya

O R D E R

This civil revision petition has been filed seeking to set aside the fair and final order passed in IA No.5 of 2023 in OS No.223 of 2009, dated 12/09/2023 by the Additional District Munsif Court, Aruppukottai.



2. The facts in brief:-

A suit in OS No.223 of 2009 was filed by the respondent herein as plaintiff seeking the relief of declaration and recovery of possession, mesne profit, etc. The defendant entered appearance, who is the petitioner herein, filed the written statement, after that, trial commenced. At the fag end of the trial process, IA No.5 of 2023 was taken out by the respondent herein seeking amendment of the plaint, which came to be allowed by the trial court, on 12/10/2023.

3. Against which, this revision has been preferred.

4. That petition was filed by the respondent herein with the following averments:-

When the suit was filed, at the time, the property is a punja land. The defendant constructed a Spinning Mill and also put up a compound wall measuring about 11 or 12 feet height. So the respondent herein namely the plaintiff could not enter into the same and see the construction. The construction, that was made by the defendant was brought to his notice, when the Commissioner was appointed. In order to avoid unnecessary complications, the petition was filed seeking amendment



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of the prayer or to incorporate the prayer for mandatory injunction in respect of the portion mentioned as 'A E F D G A' in the commissioner's report.

5.That was resisted by the respondent by filing counter stating that it is a belated attempt on the part of the petitioner. It is also denied that the construction was made within the enclosure. The availability of the superstructure and other buildings were known to the respondent. Even in the plaint itself, it is stated that the construction was put up in 2004 itself. So the prayer sought for mandatory injunction is also barred by limitation.

6.After hearing both sides, the trial court thought it fit to allow the petition observing that since the petition has been filed before cross examination of PW1, there is no bar. Whether the prayer sought for in the plaint is barred by limitation or not can be found out only during the course of trial.

7.Against which, this civil revision petition is filed by the defendant.

8.Heard both sides.



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9.A short point, which arises for consideration in this matter is whether the amendment sought for by the respondent herein is superfluous.

10.The main suit is filed by the plaintiff on the ground that the petitioner herein encroached the property belongs to him and put up a compound wall in October 2007. Since he is in possession of that portion, on that ground, the relief of declaration and recovery of possession is sought, apart from the mesne profit as noted above. The necessity of filing the petition arises for the respondent on the basis of the Commissioner report. The Commissioner inspected the property and filed a report noting down the superstructure made by the defendant. That was filed, on 20/03/2020, after the chief examination of the plaintiff.

11.There is a clear observation by the trial court to the effect that since the main suit is one for declaration and recovery of possession, the mandatory injunction is superfluous in nature. Even though it is not required, but however, to avoid unnecessary complications and technical defects, it thought it fit that it may be allowed.



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12.As observed by the trial court, I am also of the considered view that the mandatory injunction prayer is clearly a superfluous. If the decree is passed in favour of the respondent herein for recovery of possession, then the superstructure available in that property must be removed. It is not the case of the respondent that the superstructure available in the disputed property belongs to him, but belongs to the defendant herein. So unnecessarily the petition has been filed after commencement of the trial process.

13.The learned counsel appearing for the respondent by relying upon the judgment of the Hon'ble Supreme court in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & another (2022 LiveLaw (SC) 729)*** would submit that a detailed guideline has been given in the above said judgment as to how the amendment applications must be dealt with.

14.Per contra, the learned counsel appearing for the petitioner would rely upon the judgment of this court in ***N.Gangammal Vs. D.Ramesh (2017 0 Supreme (Mad) 467.*** But without going into those aspects, as mentioned above, since the prayer is superfluous in nature, this civil revision is liable to be allowed.



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15.In the result, this civil revision petition stands **allowed**. The fair and final order passed in IA No.5 of 2023 in OS No.223 of 2009, dated 12/09/2023 by the Additional District Munsif Court, Aruppukottai is set aside. No costs. Consequently, connected Miscellaneous Petition is closed. Consequently, connected Miscellaneous Petition is closed.

16.After disposing the matter, the learned counsel appearing for the respondent would submit that now the prayer sought for has been declined by this court, so this should not stand in the way of future steps to be taken by the petitioner herein in the event of passing of the decree. But again this request is superfluous, in view of the above finding of this court.

12/03/2024

Index:Yes/No
Internet:Yes/No
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To,

The Additional District Munsif,
Aruppukottai.



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G.ILANGOVAN, J

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