

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1603 of 2017
& C.M.P.No.7593 of 2017

1.Piyari John
2.Moulana Ali
3.Farid Basha

.. Petitioners

Vs.

1.Kowsar
2.Wasiya Begum
3.Shahanaza Begum
4.Basheera
5.Balkis
6.Tajudeen
7.Fathima

8.The Commissioner
Corporation of Chennai,
Rippon Building, Chennai-600003.

9.The Assistant Engineer
Corporation of Chennai, Zone-62,
Perambur, Chennai-600 011.

10.S.K.Karimullah
11.Ismail
12.Ashraf Ali @ Sherudeen
13.Sabira Begum
14.Abdul Basha
15.Faisal Basha

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 04.02.2017 made in I.A.No.147 of 2016 in O.S.No.6425 of 2012 on the file of the learned XVIII Additional District Judge (Full Additional Charge) of XVII Additional District Court, Chennai.

For Petitioners	: Mr.Manoj Sreevalsan
For R1	: Mr. Md. Ehiya
For R2 to R14	: Not ready in notice

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 04.02.2017 made in I.A.No.147 of 2016 in O.S.No.6425 of 2012 on the file of the learned XVIII Additional District Judge, Chennai.

2. The petitioners are the defendants 2 to 5; first respondent is the plaintiff and respondents 2 to 15 are the defendants 1 and 6 to 18 in O.S.No.6425 of 2012 on the file of the XVII Additional City Civil Court, Chennai. The first respondent filed the suit for (i) declaration to declare that the Settlement Deed dated 20.12.2007 is null and void, (ii) for partition and separate possession of plaintiff's 1/16th undivided share in the suit property (iii) for mandatory injunction directing the respondents 3 and 4 to demolish the unauthorised construction put up by the petitioners and (iv) for permanent injunction restraining the petitioners from putting up any further unlawful and illegal construction in Item No.1 of the schedule mentioned properties. The petitioners herein and the respondents 2 to 7, 10 and 11 filed written statement and are contesting the suit. The trial commenced and the first respondent has closed his evidence.

3. The first respondent filed an application in I.A.No.147 of 2016 under Order VI, Rule 17 of CPC r/w Section 151 of CPC, to amend the averments in the Court fee paragraph as well as in the prayer of the suit as stated in the petition.

4. The petitioners herein along with respondents 13 to 15 filed counter affidavit denying the averments in the application. It is contended in the counter affidavit that the first respondent/petitioner therein cannot seek amendment of prayer after trial has commenced and he ought to have filed this application immediately after filing of written statement by the defendants. It is contended that the first respondent, knows the existence of the said partition deed, even at the time of filing the suit, but now filing an application seeking amendment which is barred by limitation.

5. The learned Judge has allowed the application in I.A.No.147 of 2016 vide order dated 04.02.2017.

6. Against the said order dated 04.02.2017 passed by the learned XVIII Additional District Judge (i/c. of XVII Additional, City Civil Court), Chennai, the petitioners have filed the present civil revision petition.

7. According to the petitioners, the learned Judge has not given any reason in allowing the application filed by the first respondent, other than recording the endorsement of "no objection" made in I.A.No.147 of 2016, by the respondents 2 to 6 and 12 herein. It is contended by the petitioners that the amendment sought for by the first respondent/plaintiff is barred by limitation, as the relief of declaration that the partition deed dated 24.06.2009 is null and void, should have been sought within three years of the knowledge of the document, but the application was filed in the year 2016, which is clearly barred by limitation.

8. The learned counsel appearing for the first respondent seeks for speedy disposal of the suit in O.S.No.6425 of 2012.

9. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent.

10. Considering the reasons given in the impugned order and the submissions made by the learned counsel appearing for the petitioners and the first respondent, this Court is of the view that the order dated 04.02.2017 is liable to be set aside and accordingly the same is set aside. The matter is remitted to the learned XVII

Additional District Judge, Chennai to decide the application in I.A.No.147 of 2016 in O.S.No.6425 of 2012, on merits and to pass orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the learned XVII Additional District Judge, Chennai is directed to dispose of the suit in O.S.No.6425 of 2012, as expeditiously as possible, in any event within a period of three months from the date of receipt of a copy of this order.

11. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected civil miscellaneous petition is closed.

13.06.2017

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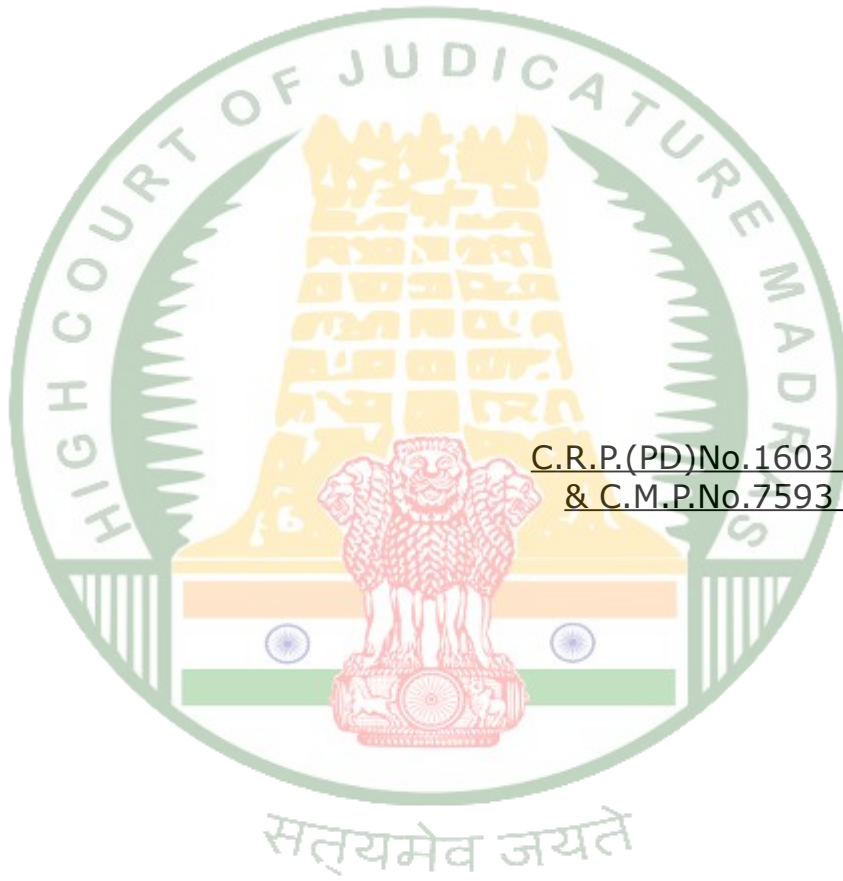
To

The XVIII Additional District Judge
(Full Additional Charge)
of XVII Additional District Court,
Chennai.

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V.M.VELUMANI,J.

ds



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