

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.1966 of 2017
& MP. No.1 of 2009

Senthamarai

...Petitioner

Vs

P.Sudhakaran

...Respondent

Prayer : Civil Revision Petition filed under Article 227 of The Constitution of India to set aside the fair and decretal order dated 17.11.2015 in I.A.No.638 of 2011 in O.S.No.155 of 2010 on the file of Additional District Judge, Chengalpet and further to direct the Additional District Judge, Chengalpet to try the issue of court fee even before filing of written statement by the petitioner.

For Petitioner : Ms.Suganyasri
for Mr.R.Karthikeyan

सत्यमेव जयते

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 17.11.2015 in I.A.No.638 of 2011 in O.S.No.155 of 2010 on the file of Additional District Judge, Chengalpet and further to direct the Additional District Judge, Chengalpet to try the issue of Court fee even before filing of written statement by the petitioner.

2. The petitioner is the defendant and respondent is the plaintiff. The respondent filed the suit in O.S.No.155 of 2010 on the file of Additional District Court, Chengalpet. The respondent filed the suit to direct the petitioner to quit and deliver vacant possession of the "A" Schedule property and to hand over the documents related to the suit properties and further to direct the petitioner to pay damages for wrongful and occupation of "A" Schedule property at the rate of Rs.1,00,000/- per month from the date of plaint till the delivery of possession, and for permanent injunction restraining the petitioner from alienating the suit schedule properties to any third parties.

3. The petitioner filed an application in I.A.No.638 of 2011 in O.S.No.155 of 2010 under Order VII Rule 11 CPC to reject the plaint on the ground that the respondent had intentionally under-valued the suit schedule properties and camouflaged the actual guideline value in order to evade from payment of necessary Court fee. The Court fee paid by the respondent is also not correct and he has paid only the deficit Court fee.

4. The respondent opposed the said application on the ground that the relief sought by the petitioner in I.A.No.638 of 2011 is baseless and contrary to the provisions of Order VII Rule 11 CPC and submitted that he has paid the correct court fee.

5. Before the learned Judge, the petitioner has not produced any documentary evidence to substantiate her case that the respondent had under-valued the property and paid the deficit Court fee. The learned Judge, considering the averments in the plaint, affidavit and counter affidavit and in view of the cause of action disclosed in the plaint, has held that the plaint document discloses a *prima facie* case, and the question of under-valuation and improper court fee of the suit will be decided only during trial. If the petitioner files written statement in the suit and raises the question of deficit court Fee, then necessary issues will be framed and tried as a primary issue. But the petitioner has not filed the written statement, and hence the relief sought for in this application cannot be decided at this stage. It is well settled law that while considering the application filed under Order VII Rule 11 CPC, the averments in the plaint will be taken into consideration and it is the main criteria to decide the application. In view of the same, the learned Judge has exercised his power properly and by considering the scope of the application filed under Order VII Rule 11 CPC, has rightly dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity in the order warranting interference by the Court.

6. In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

22.06.2017

Speaking (or) Non Speaking
Index : Yes (or) No
Internet : Yes (or) No

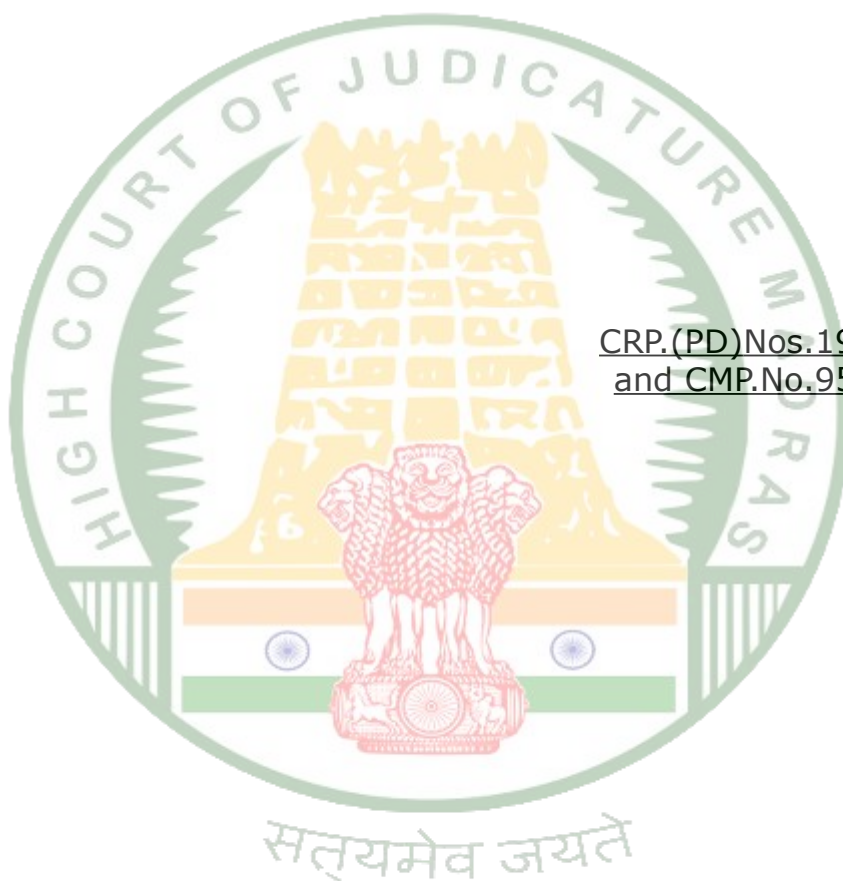
To:
The Additional District Judge,
Chengalpet.



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V.M.VELUMANI,J

rna/ds



CRP.(PD)Nos.1966 of 2017
and CMP.No.9504 of 2017

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