

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-11-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.PD.No.3193 OF 2017

J.Arivalagan

...

Petitioner

-VS-

R.Viji

...

Respondent

Petition against the order, dated 01.08.2017, passed in I.A.No.9408 of 2017 in O.S.No.853 of 2013, on the file of VI Assistant Judge, City Civil Court, Chennai.

For petitioner : Mr.V.V.Sairam

For respondents : Mr.KManikandan

ORDER

Second defendant in the suit is the revision petitioner herein. The suit was filed against him and other defendants by the respondent/plaintiff for a decree of mandatory injunction, directing the Corporation of Chennai, to demolish the unauthorised construction made by defendants 1 to 3 in the suit and for permanent injunction, restraining them from disturbing with her peaceful possession.

2. The contention of the petitioner before the trial Court was that he has put up the construction only as per the sanctioned plan and he has not encroached the

property of the plaintiff or the common passage. The matter was posted for evidence on the side of the defendants. While so, he filed an interim application to summon the vendor of the plaintiff to let in evidence on his side. The respondent/plaintiff denied the averments and contended that the application was filed with an ulterior motive to protract the proceedings. According to her, the petitioner had filed the application I.A.No.13523 of 2013 to reject the plaint and the same was dismissed on 17.02.2015, against which, he preferred C.R.P.No.1117 of 2015, which was also dismissed on 22.04.2015 by this High Court, with a direction to the trial Court to dispose of the suit within a period of four months; the four month period elapsed on 22.08.2015; thereafter, she filed a petition for amendment, which was allowed by the trial Court, against which also, the petitioner has preferred C.R.P.No.3865 of 2015 and the same was dismissed, extending the time for disposal of the suit on or before 29.01.2016. Thereafter, the petitioner filed several applications to recall P.W.1 and D.W.1 and to permit him to file additional proof affidavit and so on and so forth. The respondent/plaintiff conceded to all his demands in order to get the suit disposed of within the time limit fixed by the High Court. In such circumstances, the application to summon the vendor of the plaintiff came to be filed. The vendor of the plaintiff had nothing to do with the issue on hand. The suit was filed for demolition of unauthorised construction made by the petitioner/defendant. In such a case, the vendor of the plaintiff was not going to make any useful evidence. The petition itself was filed with an

ulterior motive to protract the proceedings and, accordingly, she sought for dismissal of the petition.

3. The trial Court has considered the contentions of both the parties and come to the conclusion that the petitioner is indulged in dragging on the proceedings and the directions of the High Court to dispose of the case within the time limit could not be complied with.

4. Heard both sides.

5. On a perusal of the material on record, it is seen that the suit is for mandatory injunction to remove the unauthorised construction made by the petitioner/defendant and consequential injunction restraining him from disturbing with the possession of the respondent/plaintiff. Admittedly, cause of action has arisen for the respondent/plaintiff to file the suit only after purchase of the property. The allegations of unauthorised construction and encroachment are not privy to the vendor of the plaintiff and he may not be in a position to speak about the subsequent events, which took place after the sale of the property. In such circumstances, this Court is also of the considered view that the findings of the trial Court are based on reasons and do not require any interference. If at all the petitioner wants to let in evidence in support of his case, he is free to do so in the manner known to law, but he shall not adopt dilatory tactics to protract the proceedings.

6. Civil Revision Petition merits no consideration and is, accordingly, dismissed. The trial Court is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected C.M.P.No.14939 of 2017 is also dismissed.

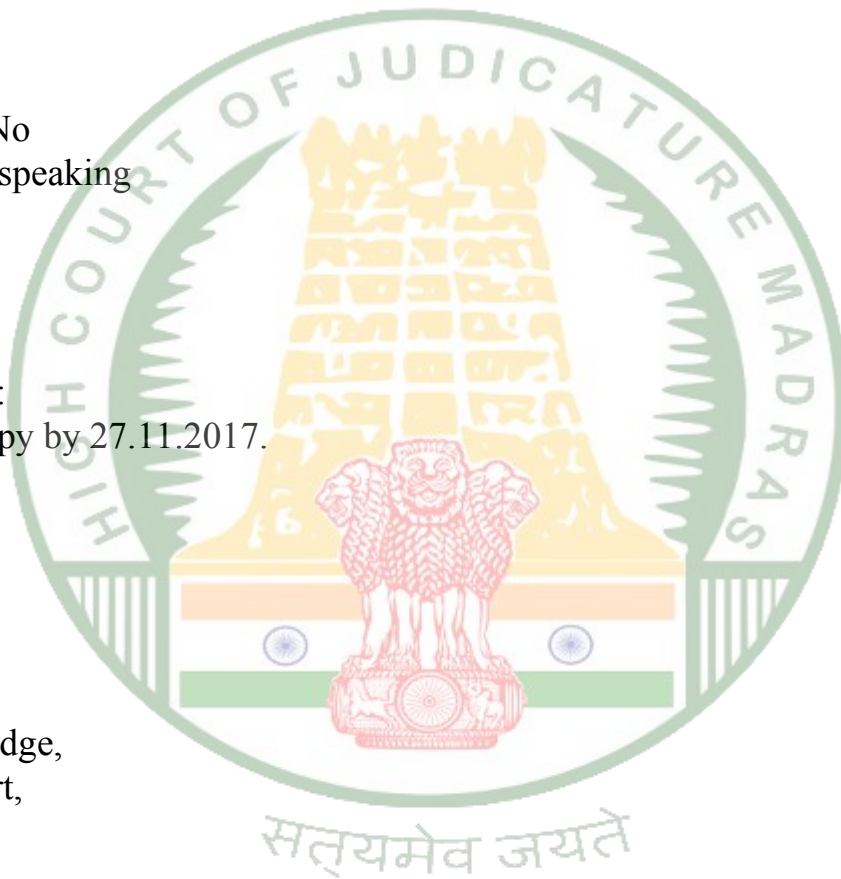
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Note to Office :
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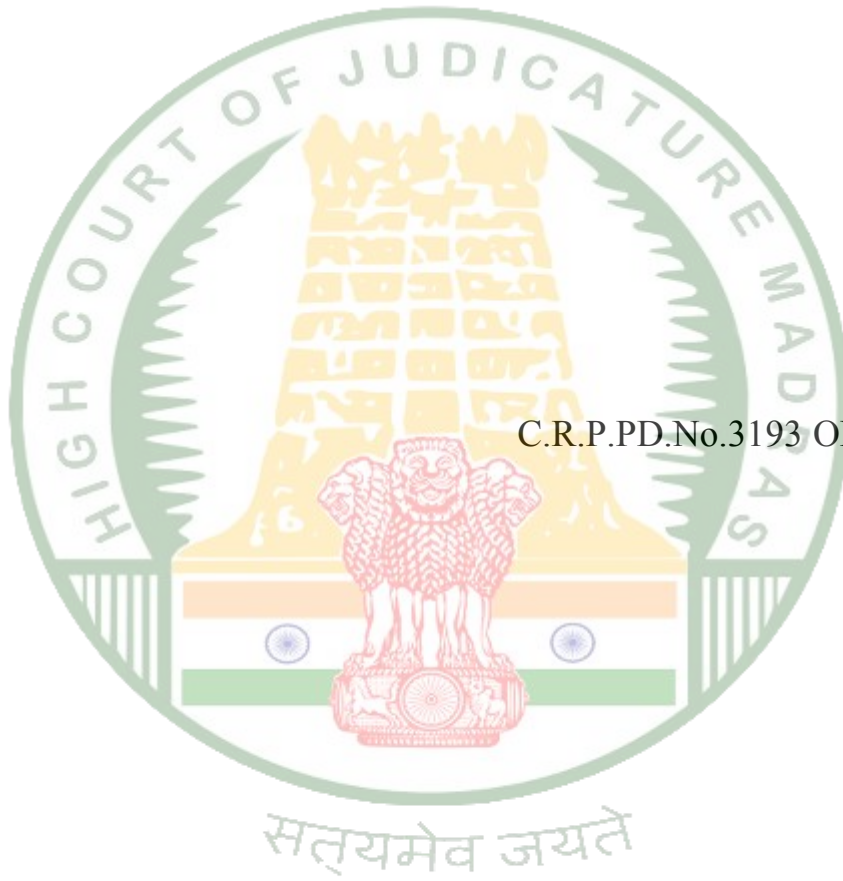
VI Assistant Judge,
City Civil Court,
Chennai.



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M.GOVINDARAJ,J.

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