

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

CORAM

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

**CRP.PD.No.3711 of 2017 and
CMP.No.17236 of 2017**

V.Chinnappaiya Naicker ... Petitioner

Vs.

1.S.Balamurugan
2.S.Balamurugan
rep.by his Power Agent
G.Selvaraj

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 28.04.2015 in I.A.No.222/2014 in O.S.No.314 of 2010 on the file of the Additional District Munsif, Kanchipuram.

For Petitioner : Mr.R.Mubarak Basha

ORDER

WEB COPY

According to the petitioner, the petitioner has filed a suit in O.S.No.314 of 2010 for relief for declaration that the plaintiff had perfected his title to the plaint schedule property by adverse

possession and consequential injunction restraining the defendant from interfering the property. The petitioner filed written statement and trial Court has framed the issues and the suit has been posted for trial. At this stage, the present application has been filed for the reason that certain pleadings has been added on the basis of certain documents. The respondent herein / defendant has filed the application in I.A.No.222 of 2014 disputing the court fees and also raising new plea of land grabbing. The trial court has allowed the said application. Hence, the petitioner has filed counter statement and objected the application filed by the respondent / defendant. The trial court without considering the objection of the revisional petitioner has allowed the application. Hence, the petitioner has filed the present Civil Revision Petition.

2. The learned counsel for the petitioner would submit that after the chief examination of PW1, the petitioner has filed proof affidavit. Therefore, after chief examination of PW1, filing such application to raise additional written statement by the respondent cannot be accepted at the belated stage. Therefore, the court below, without properly appreciating the case of the petitioner has allowed the aforesaid application.

3. Heard, the learned counsel for the petitioner and perused the materials available on record.

4. The respondent herein filed an application in I.A.No.222 of 2014 in the suit after the chief examination of PW1. The respondent has raised the additional pleadings in the written statement by raising question of deficit court fee in terms of Tamil Nadu Court Fees Act and also raised the pleadings of land grabbing. The trial court has allowed the application by holding that the PW1 is partly examined and the case has been posted for cross continuation in respect of PW1. At this stage, the plaintiff has objected the same. The aforesaid pleading of the deficit court fee is a legal issue that can be raised at the belated stage also in the light of the decision of this Court in the case of **Muthusamy Vs. Thangarajan** reported in **(2005) 4 MLJ 119**, wherein this Court has held as follows.

"Under Order 8, Rule 9, C.P.C, power is given to the court to call for the written statement or additional written statement from any party fixing time, not exceeding 30 days,

thereby showing the provisions of Order 8, Rule 9, PC is liberal in its application, giving wide discretion to the Court, probably to give a chance to the parties, to agitate their right even raising subsequent pleas, for which, the Court should not be rigid. The courts should exercise their discretion liberally, when it will not affect the right of the party"

5. In the light of the aforesaid decision of this Court, there is no warrants to interfere with the order of the lower court at this stage. According to the petitioner, the suit has been dismissed for default and has filed an application to restore the same. In the event of restoring the said suit, it is open to the trial court to frame additional issues and to decide the suit in accordance with law.

6. The Civil Revision Petition is dismissed with above observations. No costs. Consequently, the connected miscellaneous petition is closed.

06.10.2017

Speaking/Non-speaking order
Index : Yes/No

Internet : Yes/No
lok

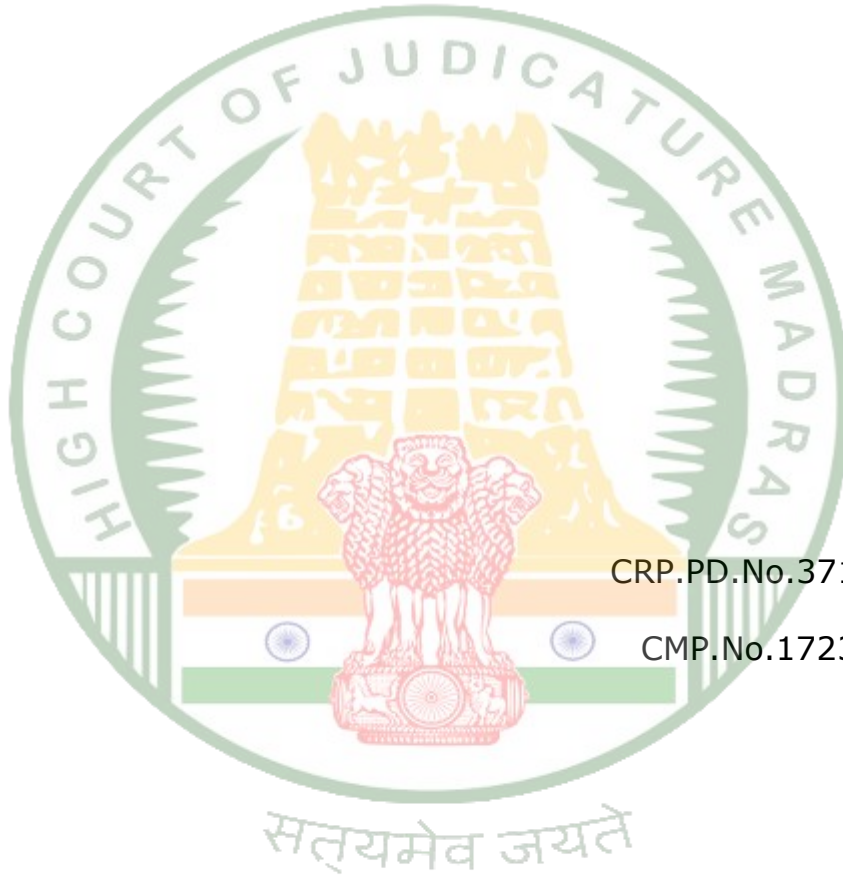
To
The Additional District Munsif,
The Additional District Munsif Court,
Kanchipuram.



WEB COPY

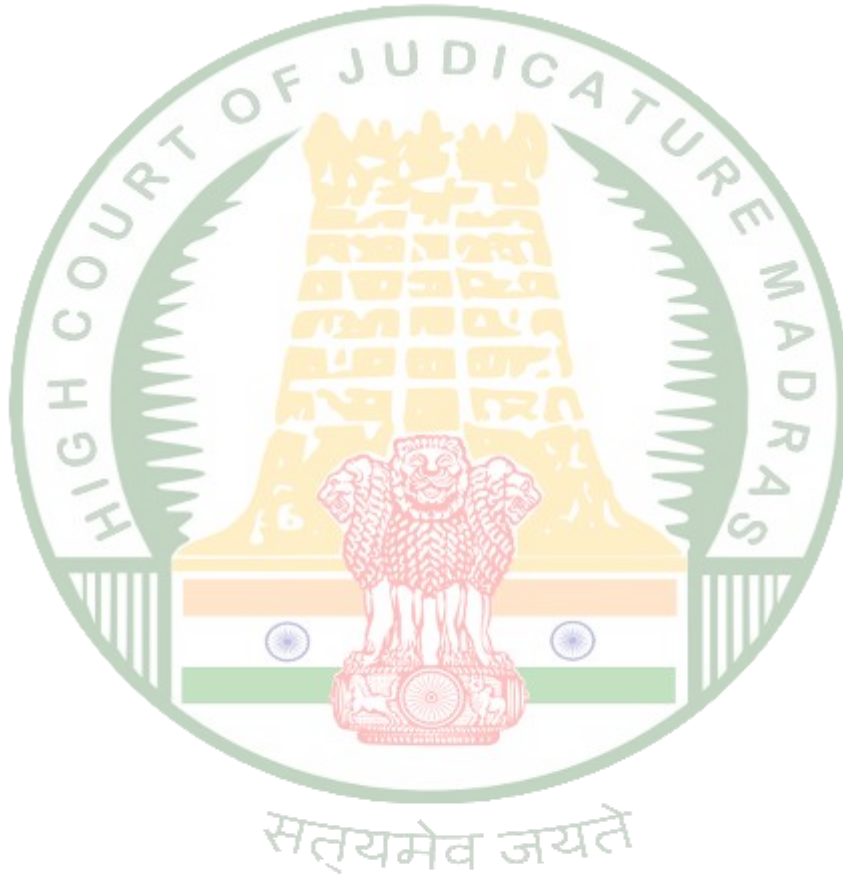
D. KRISHNAKUMAR J.

lok



CRP.PD.No.3711 of 2017
and
CMP.No.17236 of 2017

WEB COPY



WEB COPY