

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.3883 of 2017

and

C.M.P.No.18154 of 2017

1. M.Sarathy

2. D.Megala

...Petitioners

Vs.

Mugundan

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decreetal order made in I.A.No.8175 of 2016 in O.S.No.4720 of 2015 on the file of the learned VI Assistant Judge, City Civil Court, Chennai dated 21.08.2017.

For Petitioner : Mr.T.G.Balachandran

ORDER

The respondent herein has filed a suit in OS.No.4720 of 2015 for permanent injunction against the petitioners herein. In the aforesaid suit, the petitioners / defendants have filed an

application in IA.No.8175 of 2016 under Order 7 Rule 11 to reject the plaint by stating that there is no prayer for declaratory relief in respect of para 16(a) and 16(b) and sufficient court fee is not paid for the purpose of jurisdiction. The counter affidavit has been filed by the respondent herein before the court below. After considering the arguments of both the parties, the trial court has dismissed the said application by holding that the plea raised in the written statement can be decided at the time of trial not at the time of stage of plaint and the other grounds can also be decided at the time of trial. According to the learned counsel for the petitioner the court below has erroneously dismissed the application without appreciating the facts of the case. According to the petitioner, there is no declaratory prayer in the suit and there is no cause of action in the suit. Therefore, Order 7 Rule 11 application is maintainable. Hence, the order passed by this Court below is liable to be set aside.

2. Considered, the submissions made by the learned counsel for the petitioners and perused materials available on record.

3. The grounds raised by the petitioners under Order 7

Rule 11 application that there is no declaratory prayer in the suit filed for permanent injunction. The petitioners purchased the property in the year 2008. The present suit has been filed in the year 2015 and the suit is barred by limitation. The trial court has rightly dismissed the application by holding that the plea raised by the petitioner viz., suit is barred by limitation is a mixed question of law and the same can be decided at the time of trial.

4. In the light of the decision of the Hon'ble Supreme Court in the case of **Balasaria Contruction (P) Ltd Vs. Hanuman Seva Trust and Others** reported in **(2006) 5 SCC 658**, wherein the Apex court has held "*that plaint cannot be dismissed as barred by limitation without proper pleadings, framing of issue of limitation and taking of evidence, which is a mixed question of law and the same can be decided at the time of trial*". As far as the limitation is concerned, this disputed fact cannot be considered under Order VII Rule 11 of the Civil Procedure Code and the same shall be considered at the time of trial.

5. Therefore, the contention raised by the petitioners cannot be accepted at this stage. The other ground raised by the petitioner that there is no declaratory prayer in the suit cannot be

raised under Order 7 Rule 11 of the Civil Procedure Code. Therefore, the contentions raised by the petitioners cannot be accepted and the same is liable to be set aside.

6. In view of the above, the Civil Revision Petition fails and the same is dismissed. It is needless to say that the trial court has to frame necessary issues on the limitation, at the time of framing issues. The trial court is directed to dispose of the suit as expeditiously as possible. Consequently, the connected miscellaneous petition is closed. No costs.

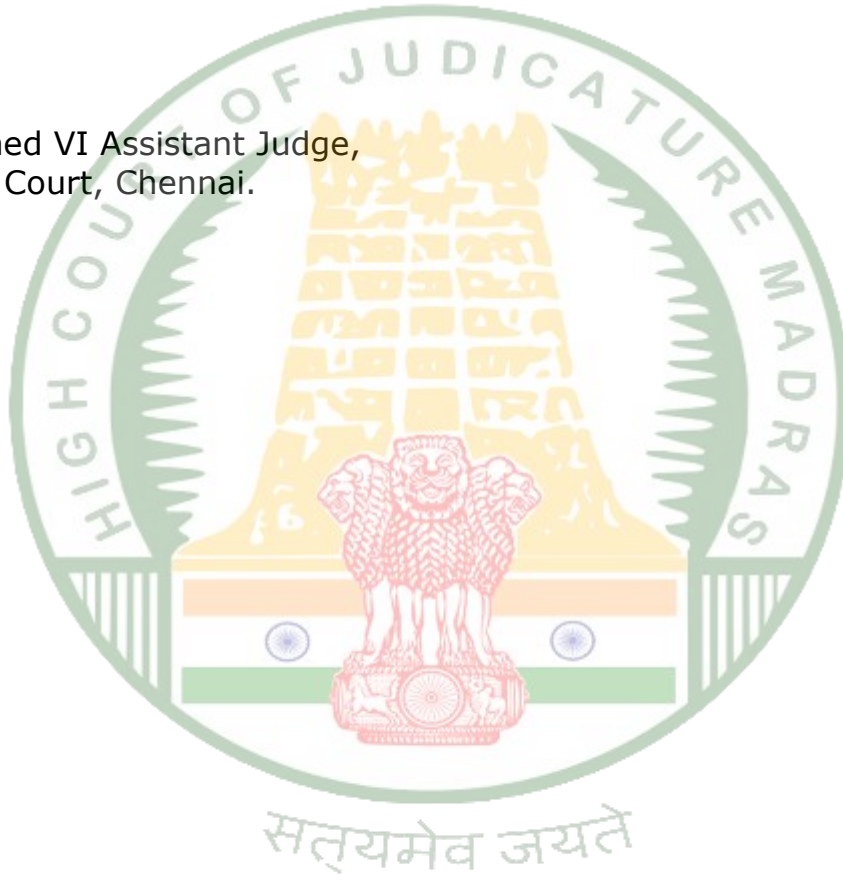
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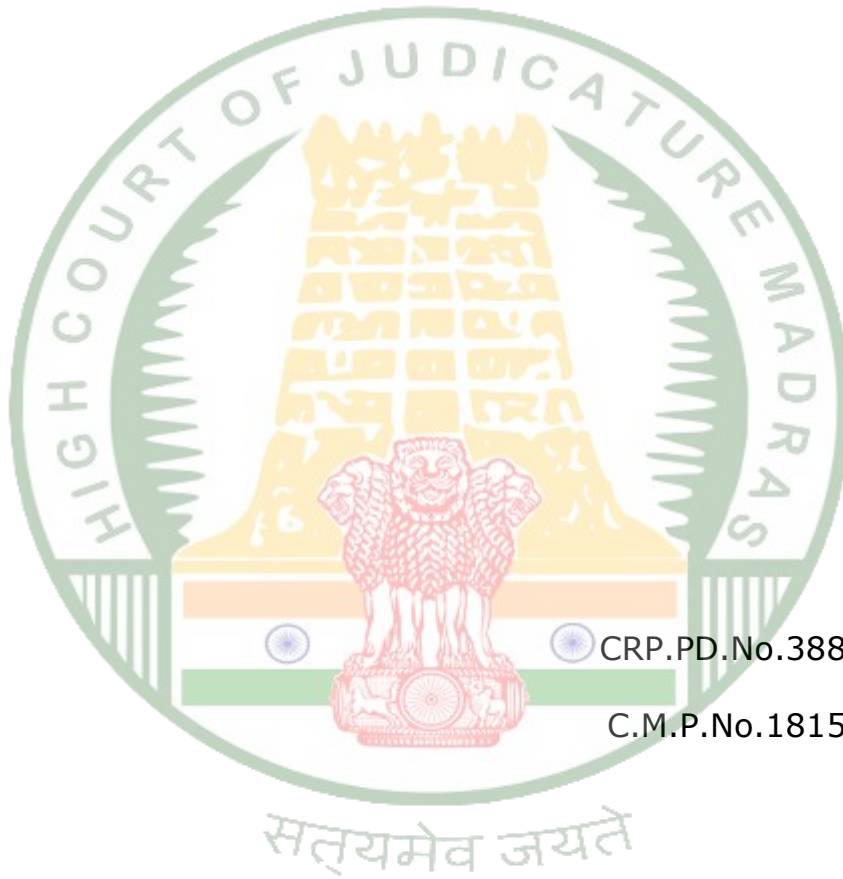
The learned VI Assistant Judge,
City Civil Court, Chennai.



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D.KRISHNAKUMAR. J,

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