

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM

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

CRP.[P.D]. No.3947 of 2017
and CMP.No.18450 of 2017

B.Emrose

..Petitioner

Vs.

1. Ganesh
2. Subbulakshmi
3. G.Mohan
4. G.Raj
5. P.Thirunavukkarasu
6. T.Mangaiarkarasi

..Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the decretal order and order passed by the learned II Assistant City Civil Court at Chennai in I.A.No.802/2017 in O.S.No.6158 of 2015 dated 12.07.2017.

For Petitioner : Mr.R.Bakayaraj

ORDER

The petitioner has filed a suit in O.S.No.6158 of 2015 before the II Assistant City Civil Court, Chennai. In the aforesaid suit, no interim injunction was granted by the trial court. Taking advantage of the same, the petitioner has left a strip of 2 feet x 30 feet = 60 Sq.ft of land on the southern portion extremity. The respondents trespassed into the above said strip of land and made

illegal construction disregarding the petitioner's protest and objection by using muscle and money power. Therefore, the petitioner filed the present amendment application under Order 6 Rule 17 of the Civil Procedure Code. Considering the counter statement filed by the respondents and considering the aforesaid contention of the petitioner, the trial court has dismissed the said amendment application. Therefore, the petitioner has filed the present Civil Revision Petition before this Court.

2. According to the learned counsel for the petitioner in order to avoid multiplicity of proceedings, the said amendment application has been filed. There is no prejudice would be caused to the respondents, if the present application is allowed. Therefore, the order passed by the trial court is liable to be set aside.

3. Considered, the above said submissions made by the learned counsel for the parties and perused materials available on record.

4. It is an admitted fact that the petitioner / plaintiff has filed the suit for permanent injunction in O.S.No.6158 of 2015. Pending the aforesaid suit, according to the petitioner, the

respondents / defendants have illegally constructed superstructure in the strip of land. Therefore, the present application has been filed to amend the prayer of the pleadings in the said suit.

5. On perusal of the order, the trial court has rightly rejected the said application. The petitioner has filed only mandatory injunction in the present suit. Therefore, the amendment application filed by the petitioner / plaintiff is inconsistent, if the petitioner is aggrieved, it is open to the petitioner to agitate the matter in the appropriate forum in accordance with law. Therefore, there is no error or illegality in the order passed by the trial court.

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

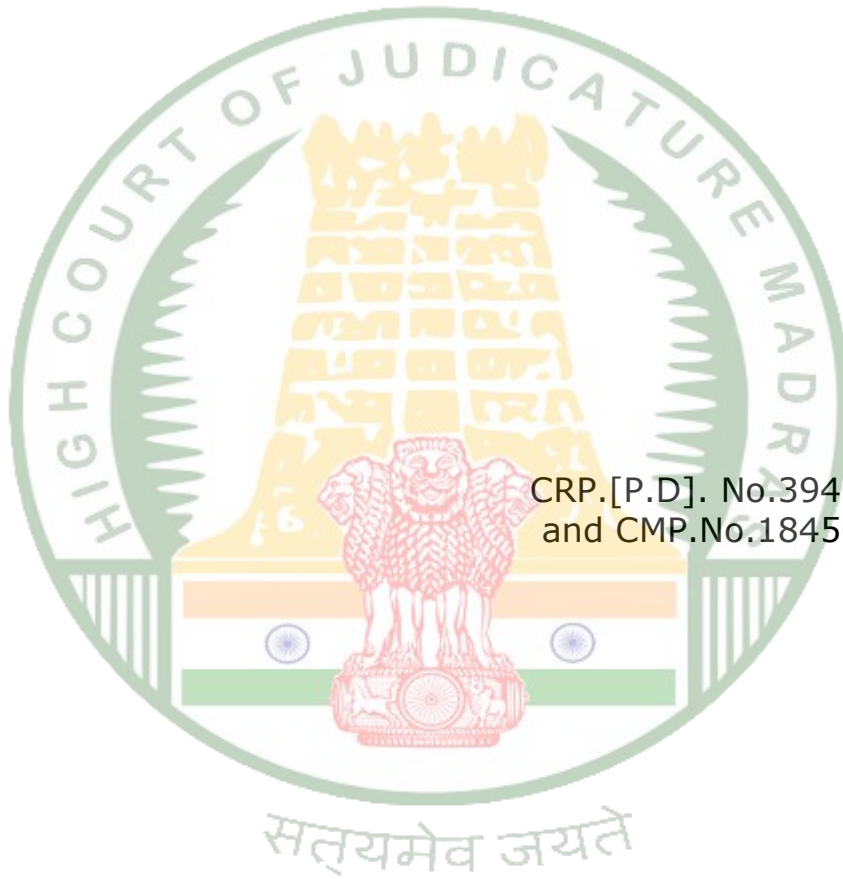
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31.10.2017

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D.KRISHNAKUMAR.J,

To
The learned II Assistant Judge,
City Civil Court, Chennai.



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