

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1054 of 2015
& M.P.No.1 of 2015

Muthuperumal

.. Petitioner

Vs.

1.Syed Noor Ali
2.Kamila Begam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.431 of 2014 in O.S.No.11 of 2013 dated 30.01.2015 on the file of the Court of District Munsif cum Judicial Magistrate, Parangipettai.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.G.Pugazhenth

ORDER

This Civil Revision Petition is filed against the fair and decretal order passed in I.A.No.431 of 2014 in O.S.No.11 of 2013 dated 30.01.2015 on the file of the Court of District Munsif cum Judicial Magistrate, Parangipettai.

2.The petitioner is plaintiff and the respondents are the defendants in O.S.No.11 of 2013 on the file of the District Munsif cum Judicial Magistrate, Parangipettai. The petitioner filed the said suit for permanent injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property. The respondents filed written statement on 21.10.2013 and are contesting the suit. The suit was listed for trial. The petitioner filed I.A.No.431 of 2014 under Order VIII Rule 9 and Section 151 of C.P.C, seeking permission to file reply statement. According to the petitioner, while preparing the proof affidavit, he came to know that allegations made in the written statement have to be denied. The delay in filing the reply statement is neither wilful nor wanton.

3.The respondents filed counter affidavit and opposed the said application on the ground that the petitioner has come out with the present application only with an intention to drag on the proceedings.

4.The learned Judge dismissed the application on the ground that if I.A is allowed permitting the petitioner to file reply statement,

confusion will arise in deciding the issue and as per Order VIII Rule 2 of C.P.C, only the defendant can file petition. The remedy available to the petitioner is only by way of amendment under Order VI Rule 7 of C.P.C.

5. Against the said order made in I.A.No.431 of 2014 in O.S.No.11 of 2013 dated 30.01.2015, the petitioner has come out with the present Civil Revision Petition.

6. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

7. From the impugned order of the learned Judge, it is seen that the learned Judge has failed to consider Order VIII Rule 9 of C.P.C, wherein subsequent to filing of the written statement, parties can file additional pleadings with leave of the Court. In the present case, the petitioner is seeking permission of the Court to file reply statement. The learned Judge failed to consider this provision as well as the reply statement filed by the petitioner to find out whether reply statement introduces a new case or new cause of action. By failing to consider order VIII Rule 9 of C.P.C, the learned

Judge has committed an irregularity in dismissing the application. In view of the same, the impugned order of the learned Judge is set aside and I.A.No.431 of 2014 is remitted back to the learned Judge with a direction to consider the same afresh in consonance with Order VIII Rule 9 of C.P.C and pass orders on merits and in accordance with law within a period of four (4) weeks from the date of receipt of a copy of this order.

8.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.12.2017

Index: Yes/No

gsa

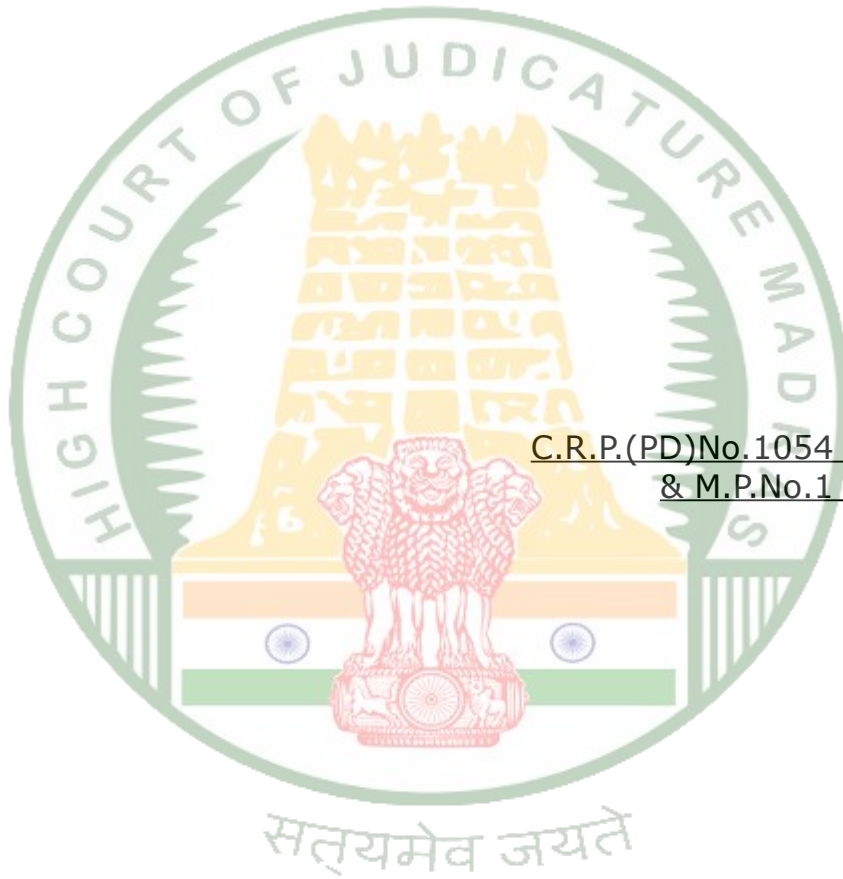
To

The District Munsif cum Judicial Magistrate,
Parangipettai.

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V.M.VELUMANI,J.

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