

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2272 of 2011
& M.P.No.1 of 2011

V.Durairaj

.. Petitioner

Vs.

1.Ravichandran
2.Dhasaradan @ Rajamani
3.Gunasekaran
4.Krishnamoorthy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.11.2009 made in I.A.No.1532 of 2009 in O.S.No.644 of 2002 on the file of the III Additional District Munsif, Kallakurichi.

For Petitioner : Mr.V.Anand

For Respondents : No Appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 06.11.2009 made in I.A.No.1532 of 2009 in O.S.No.644 of 2002 on the file of the III Additional District Munsif, Kallakurichi.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.644 of 2002 on the file of the III Additional District Munsif, Kallakurichi. The petitioner filed the said suit for permanent injunction, restraining the 1st respondent, his men, his agents and his representatives from trespassing into the suit property and to make any further construction in the suit property on the west of the suit property. The first respondent filed Written Statement on 17.11.2002 and is contesting the suit.

3. The petitioner filed an application in I.A.No.3020 of 2002 for interim injunction, pending suit. Initially, interim injunction was granted. The respondents filed petition to vacate the same and subsequently injunction was vacated. The petitioner has filed I.A.No.1532 of 2009 under Order 6 Rule 17 of CPC for amendment of the plaint to include the relief of mandatory injunction instead of permanent injunction. According to the petitioner, the respondents taking advantage of the interim injunction being vacated, trespassed into the suit property on 17.08.2009 and put up a building.

4. The respondents filed the counter affidavit and denied such

allegations and submitted that the petitioner has filed the suit in the year 2002 and filed number of applications only to harass the respondents. The petitioner has no intention to contest the suit and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application, imposing a cost of Rs.200/- on the petitioner holding that it is not possible for the respondent to put up a house on one day as alleged by the petitioner.

6. Against the said order of dismissal dated 06.11.2009 made in I.A.No.1532 of 2009 in O.S.No.644 of 2002, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served to the respondents and their names were printed in the cause list, there is no representation either in person or through any counsel.

8. From the materials available on record, it is seen that the

petitioner has filed the suit on 08.11.2002 for permanent injunction. According to the petitioner, pending suit, the first respondent has trespassed into the suit property on 17.08.2009 and put up the superstructure and therefore prayed for amendment of the plaint to include the relief of mandatory injunction instead of relief of permanent injunction. The petitioner has filed the said application in the year 2009. The first respondent in the written statement filed on 17.11.2002 itself has stated that he has put up construction only in the land purchased by him and he did not encroach the suit property and has not put up any construction in the superstructure and he has completed a construction and only painting work was going on. In spite of such specific averments in the written statement filed on 17.11.2002, the petitioner has not filed any application at the earliest to include the relief of mandatory injunction instead of permanent injunction.

9. The learned Judge, considering all the materials available on record, dismissed the application by giving cogent and valid reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 06.11.2009.

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

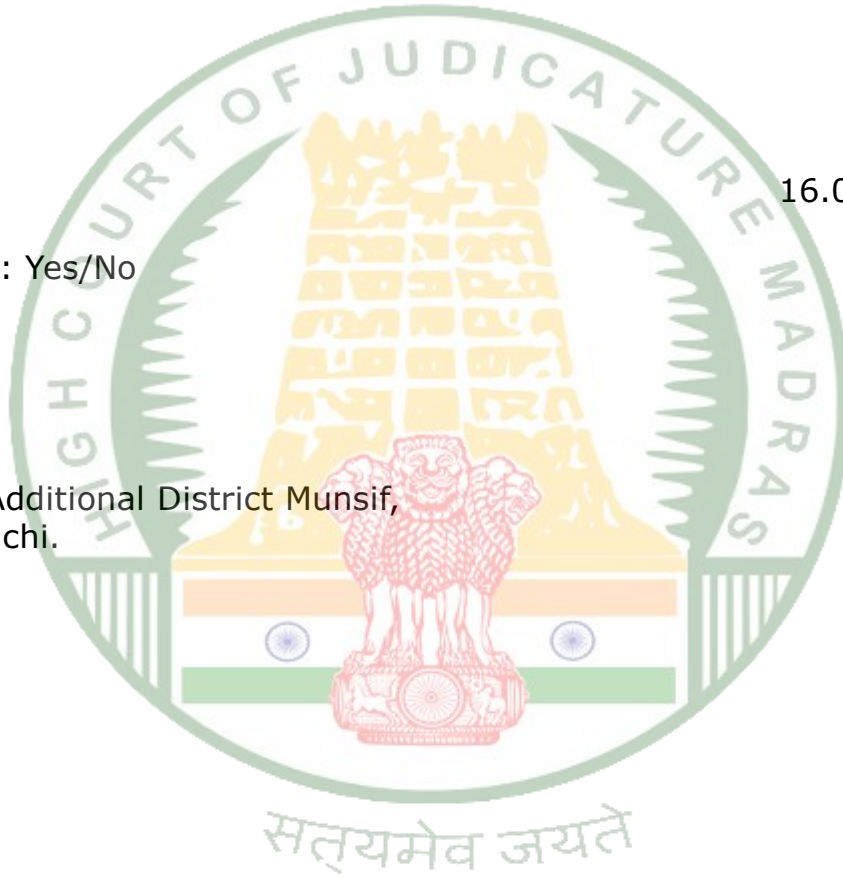
16.08.2017

Index : Yes/No

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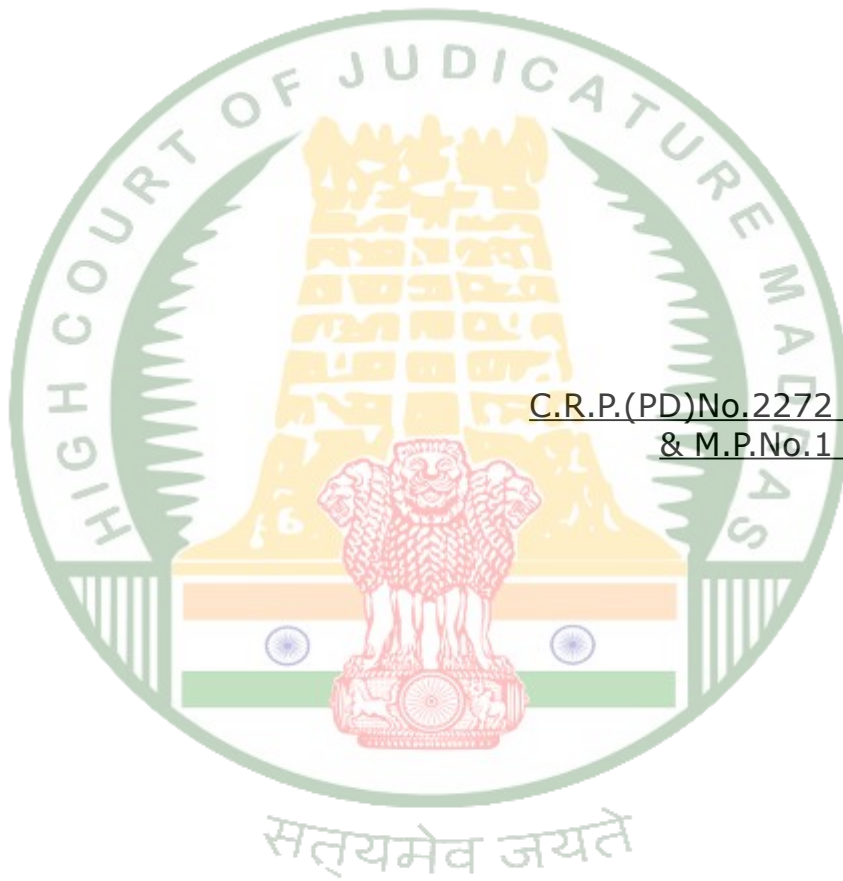
The III Additional District Munsif,
Kallakurichi.



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V.M.VELUMANI, J.

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