

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.490 of 2015
& M.P.No.1 of 2015

1.B.Kadir Ahmed
2.B.Bashir Ahmed

.. Petitioners

Vs.

A.Noorjahan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order of the learned XVI Assistant City Civil Judge, Chennai dated 09.01.2015, in I.A.No.15611 of 2014 in O.S.No.98 of 2012.

For Petitioners : Mr.M.Abdul Razack

For Respondent : Mr.K.P.Gopalakrishnan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order of the learned XVI Assistant City Civil Judge, Chennai dated 09.01.2015 in I.A.No.15611 of 2014 in O.S.No.98 of 2012.

2.The petitioners are the defendants 2 and 3 and respondent is the plaintiff in O.S.No.98 of 2012 on the file of the XVI Assistant City Civil Judge, Chennai. The respondent filed the said suit against the petitioners and one Hasina bi for permanent injunction. The petitioners filed I.A.No.14240 of 2013 under Order VII Rule 11(a) and (d) of C.P.C for rejection of plaint in O.S.No.98 of 2012, since the same is barred by *Res judicata* and Limitation and also for not disclosing any cause of action. The petitioners filed I.A.No.15611 of 2014 in I.A.No.14240 of 2013 under Order XIII Rule 10 of C.P.C to send for the documents namely plaint, judgment and decree in O.S.No.8113 of 1981. The O.S.No.8113 of 1981 was filed by the respondent along with the first defendant, who is the daughter of respondent for declaration of title and permanent injunction. The suit property is one of the property in the said suit. The said suit was dismissed on 27.09.1983. The first appeal in A.S.No.570 of 1985 was dismissed by this Court on 23.12.1988. The respondent and the first defendant have not filed any appeal against the judgment of this Court. In the circumstances, the petitioners have filed I.A.No.14240 of 2013 for rejection of plaint and to prove their contention, in I.A.No.14240 of 2013, the petitioners have filed present I.A.No.15611 of 2014 to send for the documents namely

plaint, judgment and decree in O.S.No.8113 of 1981 from the Record Section.

3.The respondent filed counter affidavit and contended that the petitioners are party to the earlier suit and they have stated that already they had applied for certified copy of the plaint, judgment and decree and therefore, the present application is not maintainable.

4.The learned Judge, considering the averments in the affidavit, counter affidavit, judgments relied on by the parties and the fact that the orders could be passed in application for rejection of plaint only by considering the averments in the plaint and documents filed along with the plaint, dismissed the application giving liberty to the petitioners to file application for very same relief in future, if necessary.

5.Against the said order dated 09.01.2015 made in I.A.No.15611 of 2014 in O.S.No.98 of 2012, the petitioners have come out with the present Civil Revision Petition.

6. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

7. From the materials on record, it is seen that the petitioners have filed the application in I.A.No.14240 of 2013 for rejection of plaint on the ground that there is no cause of action and the suit is barred by law. To substantiate their case, the petitioners have filed the present application to send for the plaint, judgment and decree in O.S.No.8113 of 1981. The petitioners are parties to the suit in O.S.No.8113 of 1981 and they have stated that they already had applied for certified copy of the documents. In the circumstances, this application is not maintainable and the learned Judge has rightly dismissed the application. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 09.01.2015 made in I.A.No.15611 of 2014 in O.S.No.98 of 2012.

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8.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The learned counsel for the respondent seeks speedy disposal of the suit. The suit is of the year 2012. The learned Judge is directed to dispose of the suit as expeditiously as possible and in any event not later than four (4) months from the date of receipt of a copy of this order.

19.12.2017

Internet: Yes/No

Index: Yes/No

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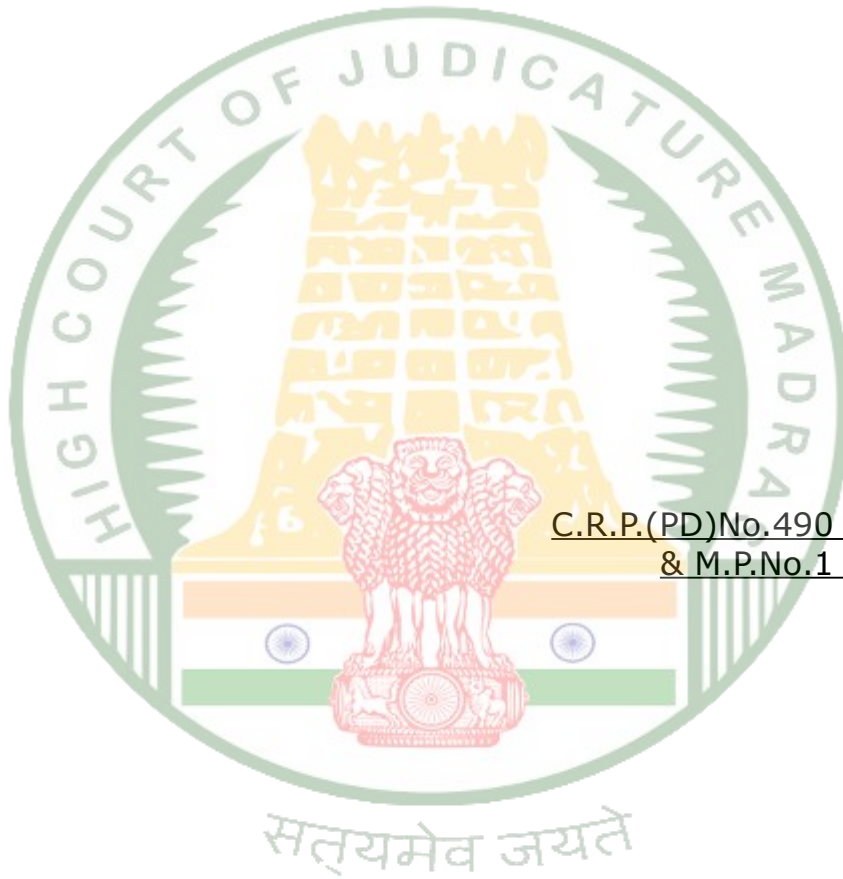
To

The XVI Assistant City Civil Judge,
Chennai.

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V.M.VELUMANI, J.

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