

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.12.2017

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(PD).No.552 of 2015
and M.P.No.1 of 2015

1.R.Karthikeyan
2.R.Parthiban

.. Petitioners

Vs.

1.M.Marimuthu
2.Somasundaram

.. Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.12.2014 made in I.A.No.910 of 2014 in O.S.No.29 of 2012 on the file of the Principal District Munsif Court, Erode.

For Petitioners : Mr.S.Thangavel

For Respondents: Mr.I.C.Vasudevan

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 23.12.2014 made in I.A.No.910 of 2014 in O.S.No.29 of 2012 on the file of the Principal District Munsif Court, Erode.

2. The petitioners are the plaintiffs and respondents 1 and 2 are the defendants 1 and 2 in O.S.No.29 of 2012 on the file of the District Munsif Court, Erode. The petitioners filed said suit for declaration and recovery of possession against the respondents and two others. The second respondent filed written statement on 28.11.2012 and first respondent filed written statement on 19.03.2013 and are contesting the suit. The trial commenced and on behalf of the petitioners, P.W.1 was examined in chief and was cross-examined by the counsel for the respondents in part. At that stage, the respondents filed I.A.No.910 of 2014 under Order VIII Rule 9 of C.P.C. to permit the respondents to file additional written statement.

3. According to the respondents, certain legal pleas were omitted to be stated in the written statement filed earlier and it is necessary to file additional written statement to incorporate the same.

4. The petitioners filed counter affidavit and opposed the said application on the ground that by filing additional written statement, the respondents are taking contrary stand from the stand taken in the written statement already filed and reason given by the respondents are not valid for granting permission to file additional written statement.

5. The learned Judge allowed the application on payment of costs of Rs.500/- on the ground that the respondents are taking legal plea and the same plea is not contrary to the earlier plea.

6. Against the said order dated 23.12.2014 made in I.A.No.910 of 2014, the present Civil Revision Petition is filed by the petitioners/plaintiffs.

7. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

8. From the written statement filed by the respondents earlier and additional written statement now sought to be filed by the respondents, it is seen that the respondents have taken contrary stand in the additional written statement to the stand taken in the original written statement. The respondents are introducing a new case. The learned Judge failed to take note of the fact that the respondents by filing additional written statement introducing a new case and erred in holding that there is no contradiction between two written statements. The learned Judge also erred in allowing the application on the ground that the respondents are taking legal plea. A legal plea can be raised

at any stage of the proceedings even without any pleadings. The learned Judge without considering the contradiction in the additional written statement, committed an irregularity in allowing the application. The additional written statement can be permitted to be filed only to clarify the statement made in the written statement filed or putforth the fact to fortify the statement made in the written statement. The defendants are not entitled to introduce a new case or new cause of action or withdraw the admission made in the written statement filed earlier. For the above reason, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside. The learned Judge is directed to return additional written statement to the respondents and not to consider the same while deciding the issue.

9. In the result, the Civil Revision Petition is allowed by setting aside the fair and decretal order dated 23.12.2014 made in I.A.No.910 of 2014 in O.S.No.29 of 2012. No costs. Consequently, connected Miscellaneous Petition is closed.

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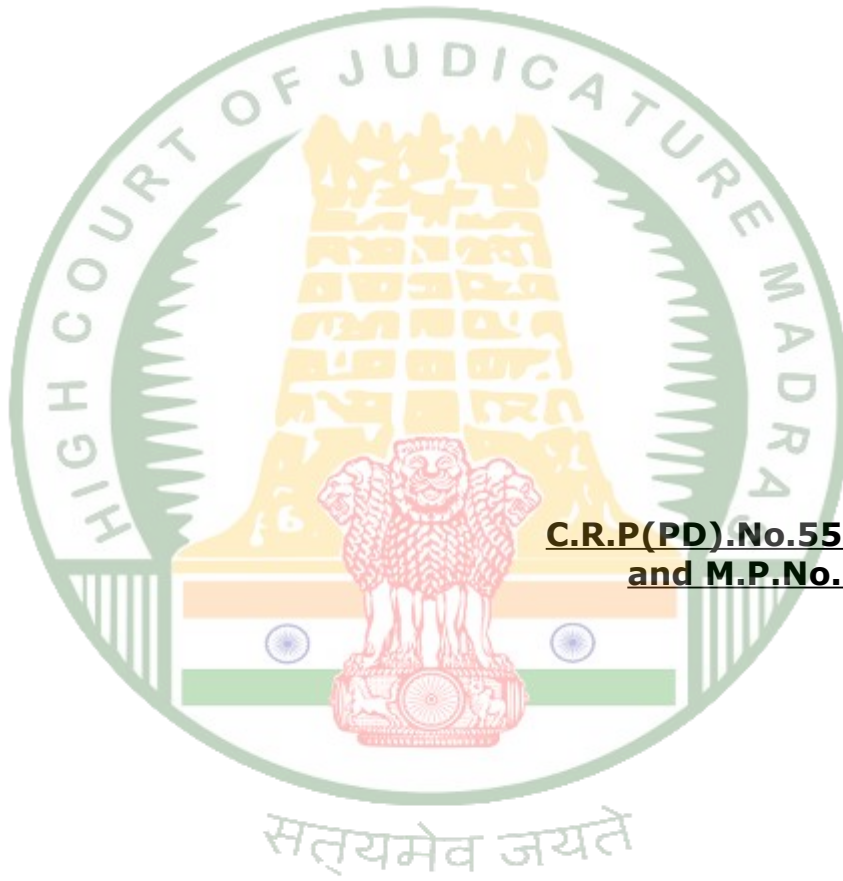
Index:Yes/No

kj
To

The Principal District Munsif Court, Erode.

V.M.VELUMANI,J.

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