

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.2409 of 2012 and
M.P.No.1 of 2012

Kathirvel

.. Petitioner

vs

1.Chitra
2.Duraisamy

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decretal order in I.A.No.144 of 2012 in O.S.No.169 of 2002 dated 12.03.2012 on the file of the District Munsif, Attur.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.T.Murugamanickam

WEB **ORDER** COPY

That the instant Civil Revision Petition is filed by the petitioner/plaintiff challenging the dismissal of amendment application filed in I.A.No.144 of 2012 in O.S.No.169 of 2002 dated 12.03.2012

on the file of the learned District Munsif Court, Attur.

2.I heard Mr.V.Raghavachari, learned counsel for the petitioner and Mr.T.Murugamanickam, learned counsel for the respondents and perused the entire materials available on record.

3.The perusal of records discloses that the Revision petitioner as plaintiff filed suit for mandatory injunction and permanent injunction. Pending suit an amendment application was taken out by the plaintiff in respect of Ex-A8 plaint plan wherein the extract encroachment portion was wrongly identified on the western side, instead of eastern side.

4.The said amendment application came to be dismissed by the trial Court on the ground that it was post trial amendment.

5.The main objection on side of the respondents/defendants is that the present amendment would change the nature and character of the entire suit. Further, it is filed after examination of 2 witnesses on the side of the plaintiff.

6. Though it is a post trial amendment, allowing the amendment application by permitting the plaintiff to substitute the proposed rough sketch in the place of the existing plaint plan would not alter the character of the suit, since the plaintiff is not sought to change the measurement of the encroached portion. In both the rough sketch the plaintiff has stated the alleged encroachment made by the defendants is measuring 9x36 feet. By way of the proposed amendment the plaintiff wants to exchange the plaint plan in which according to the plaintiff instead of showing the alleged encroachment on the eastern side, wrongly shown the alleged encroachment on the western side. It is for the plaintiff to prove his case by producing oral and documentary evidence in respect of the exact alleged encroachment. Therefore this Court is of the view that by allowing the proposed amendment no prejudice will be caused to the defendants and further by permitting the plaintiff to file the present rough sketch in the place of existing plaint plan will no way alter the character of the suit.

7. In the result:

(a) This civil revision petition is allowed by setting aside the order passed in I.A.No.144 of 2012 in O.S.No.169 of 2002, dated

12.03.2012, on the file of the learned District Munsif, Attur;

(b) The trial Court is hereby directed to take up the suit on day to day basis, since the suit is for the year 2002, without giving any adjournment to either parties and to dispose of the suit within a period of three months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

13.04.2017

Note: Issue order copy on 25.01.2019
vs

Index : Yes
Internet : Yes

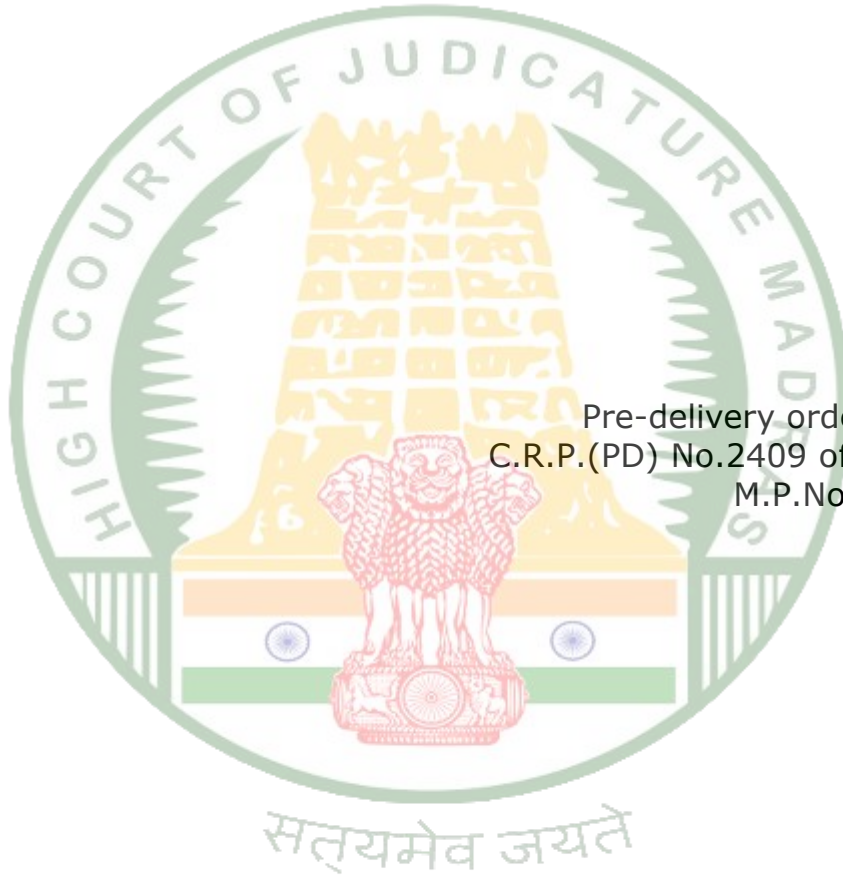
To

The District Munsif, Attur.

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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
C.R.P.(PD) No.2409 of 2012 and
M.P.No.1 of 2012

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