

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated: 03.04.2018****Coram:****THE HONOURABLE MR.JUSTICE P.VELMURUGAN****C.R.P.(PD)No.1185 of 2018****& C.M.P.No.6137 of 2018**

1. U.Shanthi
2. U.Sudha
3. U.Poornima

... Petitioners

Vs.

K.Ashok Kumar

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India pleaded to set aside the order dated 02.01.2018 passed in I.A.No.11735 of 2017 in O.S.No.3252 of 2012 on the file of learned XIV Assistant Judge, City Civil Court at Chennai.

For Petitioner : Mr.J.R.K.Bhavanantham

ORDER

सत्यमेव जयते

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This revision petition is filed against the order passed in I.A.No.11735 of 2017 in O.S.No.3252 of 2012 on the file of learned XIV Assistant Judge, City Civil Court at Chennai, for amending the prayer in the plaint. After considering the submission made by both sides, the trial Court allowed the application for amendment of plaint.

2. As against the said order passed by the trial Court in I.A.No.11735 of 2017, the petitioners/respondent is before this Court.

3. The learned counsel for the petitioners would contend that the respondent has filed the amendment petition only to change the character of the suit. Further, the respondent filed the amendment petition belatedly only after filing the written statement and after recording the evidence on either side, the trial Court without considering the above aspects simply allowed the applications for amendment of the prayer in the plaint. Therefore, he seeks indulgence of this Court to interfere with the order of the trial Court.

4. It is not in dispute that the respondent filed the suit in O.S.No.3252 of 2012 as against the revision petitioners. In the suit, written statement was filed by the petitioners and the matter was adjourned for several hearings for trial and after completion of trial it was posted for arguments, at that stage, the respondent filed the petition to amend the prayer in the plaint. The main contention of the petitioner is that originally the suit was filed as regular money suit for recovery of money and later on, the application has been filed for amendment of prayer to proceed against the estate of the deceased,

however, which would alter the character of the suit, hence amendment is not permissible. A perusal of plaint and affidavit filed by the respondent accompany with the amendment application the amendment does not change the character of the suit and even otherwise anyway it will not be prejudiced to the respondent. Insofar as the delay is concerned, this Court satisfied with the reasons stated by the respondent before the trial Court. The main suit is of the year 2012, this application is filed only in the year 2017, after completion of the trial. The trial Court has considered all the aspects and allowed the application with cost of Rs.500/-. Though this Court satisfied with the reasons stated by the trial Court, but with regard to the quantum of cost, the same is insufficient and not reasonable one. Therefore, this Court is inclined to modify the quantum of cost alone, the order of the trial Court remains unaltered with other aspects.

5. The revision petition is partly allowed, by altering the quantum of cost, since the suit is filed in the year 2012 and the application was filed at the stage of arguments.

6. The respondent is directed to pay a cost of Rs.15,000/- (Rupees fifteen thousand only) to the petitioners within a period of one

month from the date of receipt of a copy of this order, failure on the part of the respondent to do so, the order passed in I.A.No.11735 of 2017 will stand automatically dismissed, without any further reference.

7. Since the trial Court has allowed the amendment petition, the revision petitioners are at liberty to file additional written statement based on the amendment made in the plaint.

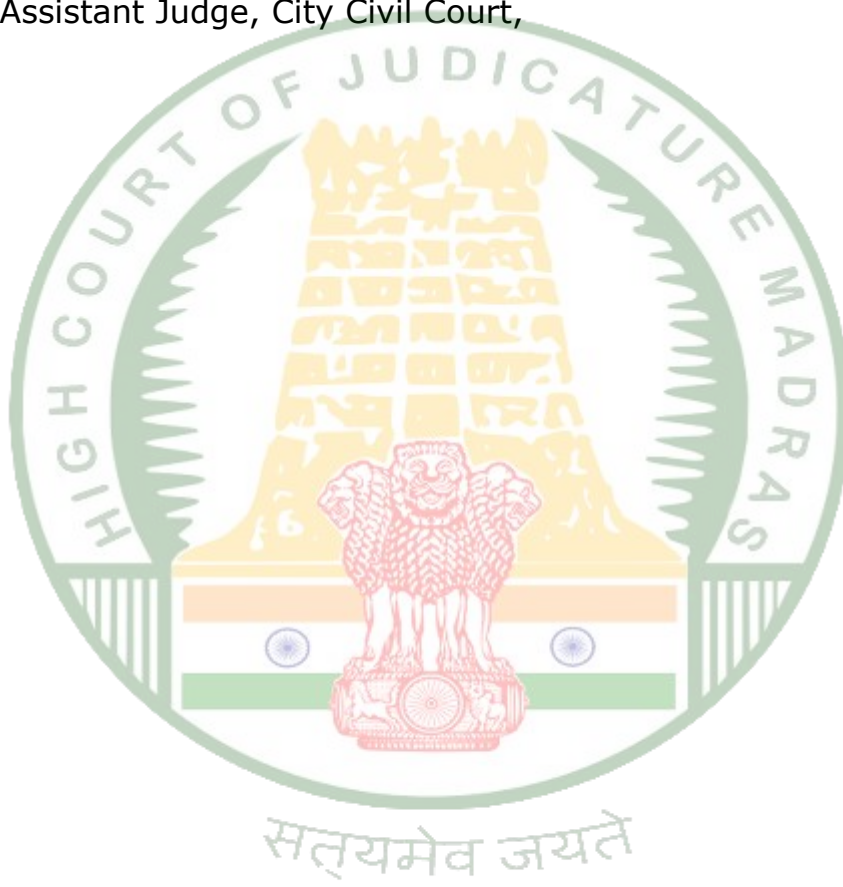
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Index:Yes/No
Speaking order / Non speaking order
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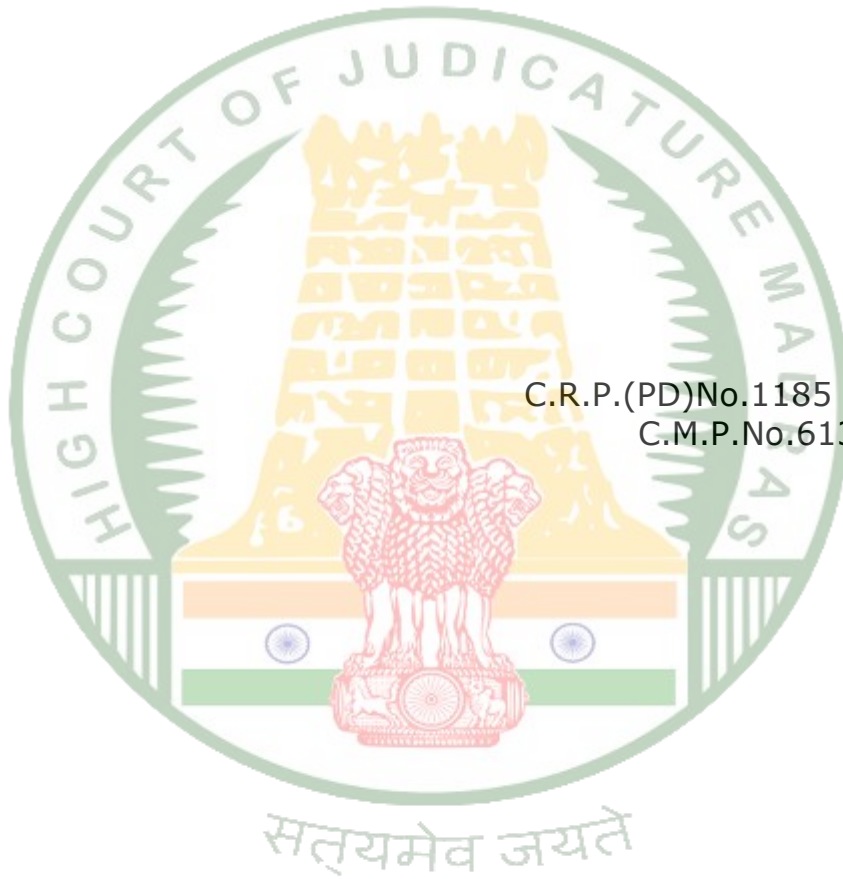
To
The XIV Assistant Judge, City Civil Court,
Chennai.



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P.VELMURUGAN. J,

AT



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