

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.04.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**C.R.P.(PD)No.1353 of 2018 andCMP.No.7129 of 2018

1. Sankar
2. Jothi
3. Balaraman

... Petitioners

Vs.

Manjula

... Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decretal order dated 20.12.2017 passed in I.A.No.6843 of 2015 in O.S.No.869 of 2015, by the learned VII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.R.Kamaraj

ORDER

This civil revision petition has been filed against the order dated 20.12.2017 passed in I.A.No.6843 of 2015 in O.S.No.869 of 2015, by the learned VII Assistant Judge, City Civil Court, Chennai.

2 The respondent herein filed a suit in O.S.No.869 of 2015 on the file of the learned VII Assistant Judge, City Civil Court, Chennai, for partition and separate possession, in which the petitioners/defendants filed their written statement and the case was posted for trial. The petitioners/defendants filed an interlocutory application under Order 7 Rule 11 of CPC, seeking to reject the plaint in O.S.No.869 of 2015, on the ground that the suit is barred by Order 2 Rule 2 and 3, since the respondent/plaintiff filed a suit earlier in O.S.No.6244 of 2014 for permanent injunction for the same property.

3 The respondent/plaintiff opposed the said application by filing her counter and stated that the earlier suit in O.S.No.6244 of 2014 was filed by her on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, for permanent injunction, restraining the petitioners/defendants from altering the physical features of the suit schedule property and not to demolish the old superstructure in the suit property. Later, pending the suit, the petitioners/defendants demolished the superstructure and hence the said suit has become infructuous and she withdrawn the suit in O.S.NO.6244 of 2014 and filed the present suit for partition and separate possession. Hence the

contention of the petitioners/defendants could not be accepted and the interlocutory application seeking to reject the plaint, is liable to be dismissed.

4 After hearing the arguments advanced on either side, the trial Court dismissed the application in I.A.No.6843 of 2015 in O.S.No.869 of 2015, by an order dated 20.12.2017.

5 Aggrieved against the said order dated 20.12.2017, the petitioners/defendants now before this Court with the present civil revision petition.

6 Heard the learned counsel appearing for the revision petitioners and perused the materials available on record.

7 According to the learned counsel for the revision petitioners, the respondent filed the present suit in O.S.No.869 of 2015 for partition without obtaining leave of the court, where she already filed a suit in O.S.No.6244 of 2014 for permanent injunction and hence the suit in O.S.No.869 of 2015 is not maintainable and the same is hit by Order 2 Rule 2 and 3 of CPC and hence liable to be

dismissed. The learned counsel further stated that even prior to filing of suit in O.S.No.6244 of 2014, the respondent is well within the knowledge of demolition of the old superstructure in the suit property, which is evident from the legal notice issued by the respondent demanding partition and to stop demolition, even then she has not chosen to file a suit for partition and filed a suit only for permanent injunction.

8 On a perusal of the records, it reveal that the earlier suit filed by the respondent was dismissed as withdrawn and it will not affect the right of claiming his share in O.S.No.869 of 2015. Further it is a well settled principle that while considering the application under Order VII Rule 11, to reject the plaint, the court has to look into the averments made in the plaint and the documents annexed with the plaint and not the defence taken by the defendant and his documents.

9 In view of the above discussions, this Court is of the view that the relief sought for by the revision petitioners is a matter to be decided after the trial and there is no reason to interfere with the order dated 20.12.2017 passed in I.A.No.6843 of 2015 in O.S.No.869 of 2015 made by the learned VII Assistant Judge, City Civil Court,

Chennai. Further the trial Court is directed to decide the suit in O.S.869 of 2015 without being influenced by the observations made in the order in I.A.No.6843 of 2015 and also in the present civil revision petition.

10 In the result the civil revision petition is dismissed. Consequently connected miscellaneous petition is dismissed. No costs.

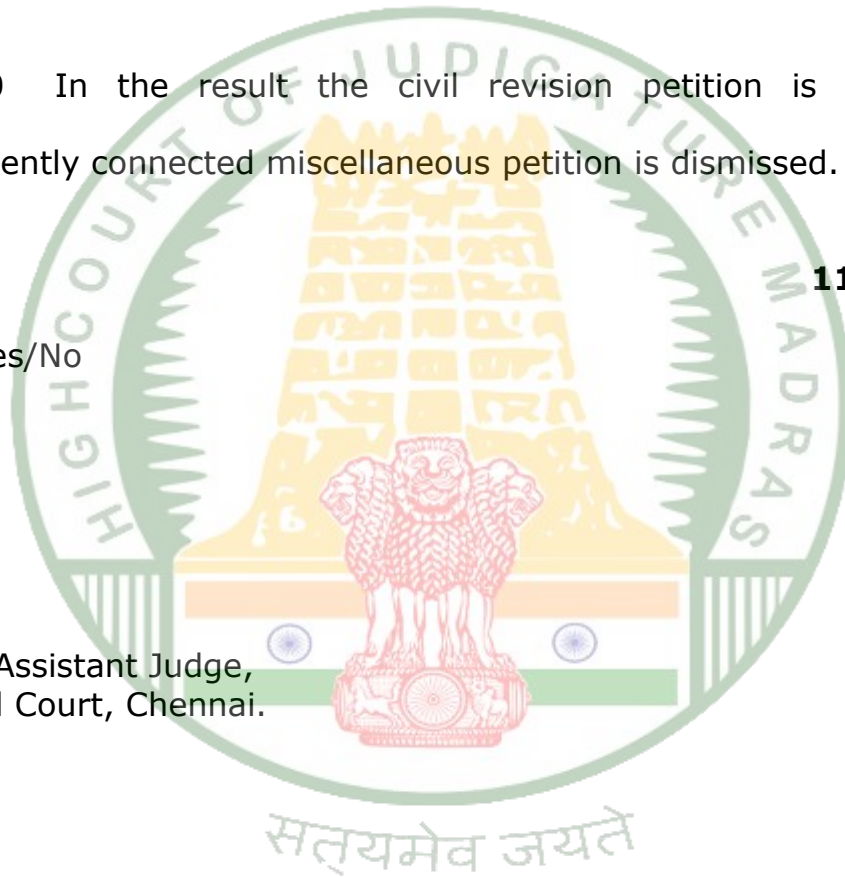
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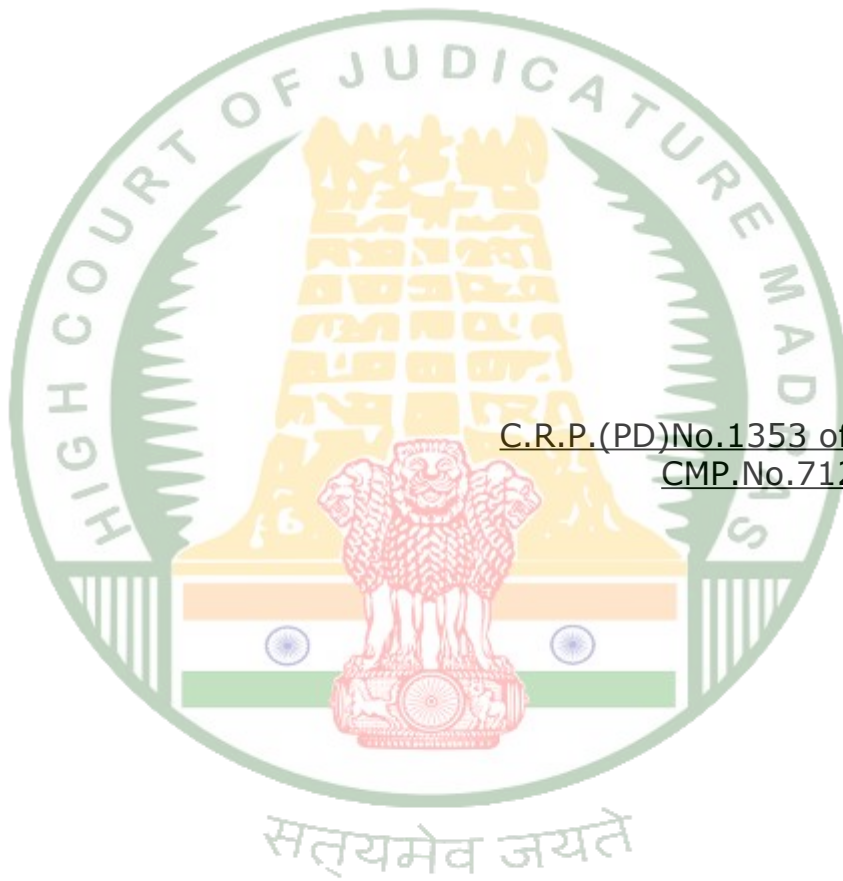
The VII Assistant Judge,
City Civil Court, Chennai.



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P.VELMURUGAN, J.,

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