

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.05.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

**C.R.P(PD)No.1644 of 2018
and
C.M.P.No.8834 of 2018**

Ragu

...Petitioner

Versus

1.M.Natarajan
2.N.Velukumar

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 15.03.2018 passed in I.A.No.14131 of 2017 in O.S.No.420 of 2012 on the file of the XIV Assistant City Civil Judge, Chennai.

For Petitioner : Mr.P.Arthi

For Respondents : Mr.Richardson Wilson
for P.Wilson Associates

ORDER

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1. The petitioner herein is the plaintiff in O.S.No.420 of 2012 on the file of the XIV Assistant City Civil Court, Chennai. The said suit is laid for bare injunction. The defendants have entered appearance and have filed their written statement. The trial of the case has commenced and plaintiff side evidence has been closed, but later re-opened at the instance of the respondents/defendants, and on their application, P.W.1 has been recalled

by the trial Court. In between, the defendants have filed I.A.No.14131 of 2017 for receiving additional pleadings under Order VIII Rule 9 CPC. This application was received by the petitioner/plaintiff but Vide the impugned Order it was allowed by the Trial court. This is challenged now by the petitioner.

2.1 The learned counsel for the petitioner submitted that there are two aspects which the defendants/respondents intend to bring it on record through their additional pleadings: (i) the impact of the Order of this Court in W.P.No.14198 of 2004 and (ii) certain facts culled out from the Commissioner's report filed in this case.

2.2 The learned counsel added that the defendants attempt to introduce additional pleadings now is only to bypass the restriction that Proviso to Order VI Rule 17 of CPC imposes in amending the plaint, and such ingenuity should not be encouraged by Courts as has been instructed in the decision of the Supreme Court in the case of **P.A.Jayalakshmi Vs. H.Saradha** [(2009) 14 SCC 525]. She also added that these pleadings are filed midway through the trial after considerable delay which also prejudice a fair trial. In aid of this proposition, she referred to the judgments of this Court in the cases of **Murthi Gounder Vs. Karppanna Gounder** [AIR 1976 Mad 302] and **Devanbu Vs. Sudararaj & Others** [2005 (1) CTC 563].

the caveator/respondents submitted that the case involves identity of the plots which the revision petitioner/plaintiff has purchased. The plaintiff has purchased a plot in Selva Nagar whereas the defendants have purchased a plot in Bhuvaneswari Nagar. Their respective identities would put to rest the dispute that the plaintiff has raised. It is in this context the pleadings in this case has become relevant. In W.P.No.14198 of 2004, this Court has an occasion to hold that the plot which the plaintiff has purchased is located in Selva Nagar. This is a relevant fact and from the stand point of the defendants, it is a sort of fact that could settle the controversy straight away. To fortify his case, the learned counsel circulated a copy of the judgment of this Court in the case of ***Damayanthi Kailasam Vs. Mrs.D.F.Philips and 3 others*** [2007 (2) CTC 813].

4. This Court did not have the advantage of going through the additional written statement as its copy was not in the typed set of papers provided by the petitioner. However, the impugned Order indicated the line of pleadings adopted in the additional written statement. It is required to be stated that the trial Judge must have reasonable space to exercise his discretion in allowing amendments to the pleadings or to file any additional pleadings. Only criterion that may outweigh such considerations is the overwhelming prejudice or unfairness to which one of the parties might be put to. Here, the trial Court's approach is justified since the Court has recorded that the plaintiff could well file his reply or re-joinder statement to the additional written statement and that he can adduce additional evidence too if the onus shifts to them. In exercising

the powers of Superintendence under Article 227 of the Constitution, this Court will not interfere with the Orders of the Courts below if they do not exhibit perversity in exercising discretionary powers vested in the courts below.

5. This Civil Revision Petition is therefore dismissed but subject to verify the burden of proof. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

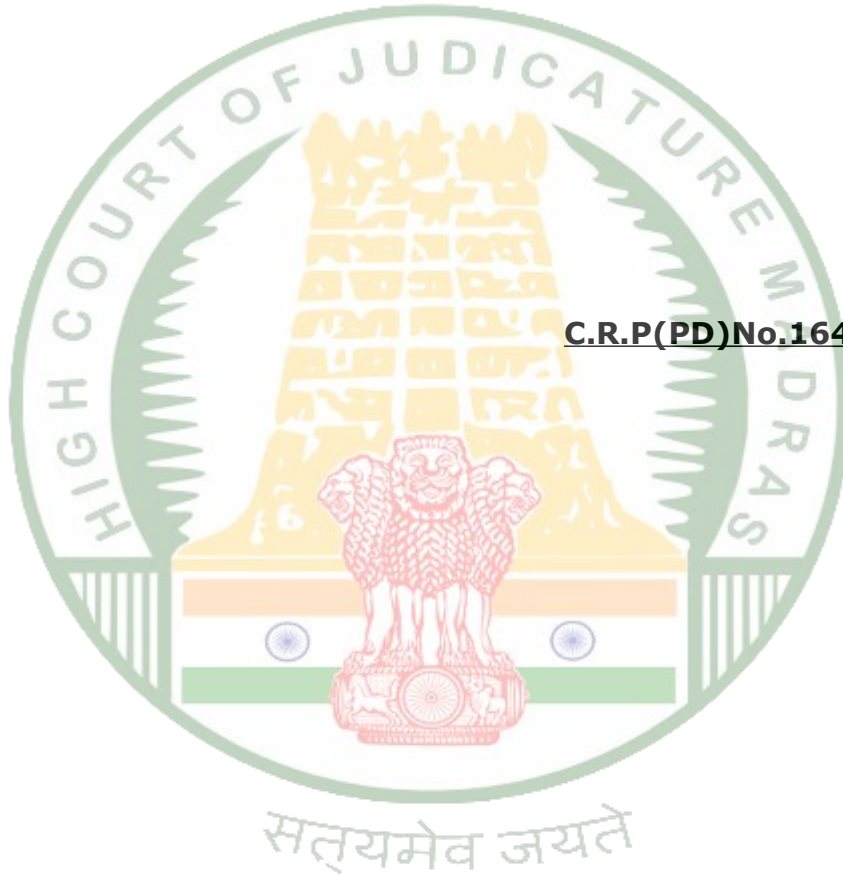
To
The XIV Assistant City Civil Judge,
Chennai.



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N. SESHASAYEE, J.,

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