



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.06.2018

C O R A M:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP.No.4902 of 2012
and M.P.No.1 of 2012

1.N.Gomathi
2.N.Meenakshi

.. Petitioners

vs.

T.R.Sivaraj

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair order and decretal order dated 15.09.2011, passed in C.M.P.No.1061 of 2011 in A.S.No.521 of 2009 on the file of the learned VII Additional District and Sessions Judge, City Civil Court, Chennai.

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

For Respondents ... Mr.G.Shivasurya

C.M.A.No.3899 of 2011
and
M.P.No.1 of 2011

1.S.Gomathi
2.N.Meenakshi

...Appellants

vs.

T.R.Sivaraj

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) Code of Civil Procedure, praying to set aside the fair order and decretal order dated 15.09.2011 passed in A.S.No.521 of 2009 on the file of the learned VII Additional Judge, City Civil Court, Chennai, against the judgment and decree dated 27.11.2008 in O.S.No.2824 of 2007, on the file of the learned XV Assistant Judge, City Civil Court, Chennai.



For Appellant : Mr.J.R.K.Bhavanantham
For Respondent : Mr.G.Shivasuriya

WEB COPY

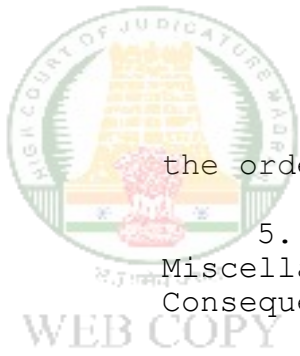
C O M M O N O R D E R

Both the Civil Revision Petition and Civil Miscellaneous Appeal have been preferred by the petitioner against the order passed in C.M.P.No.1061 of 2011 in A.S.No.521 of 2009 on the file of the learned VII Additional District and Sessions Judge, City Civil Court, Chennai.

2. Heard Mr.J.R.K.Bhavanantham, learned counsel appearing for the petitioner and Mr.G.Shivasuriya, learned counsel appearing for the respondent.

3. The brief facts of the case in Civil Revision Petition as well as Civil Miscellaneous Appeal is that the plaintiff is the petitioner in C.M.P.No.1061 of 2011. Originally, the plaintiff has filed the suit for relief of permanent injunction. The plaintiff is seeking a relief and documents have also been filed by both the appellants and respondent before trial Court. Without praying for declaration, the relief sought by the plaintiff cannot be decided. Hence, in order to arrive at a proper decision, the Trial Court has allowed the application filed by the respondent/plaintiff.

4. It is observed from the records that documents have been filed for the possession of the suit property by the plaintiff. But, regarding the enjoyment of the property, no documents have been filed. It is argued by the plaintiff/respondent during the time of trial, his well wishers advised him for prayer of declaration of title in respect of the suit property to avoid further litigations, he has filed the petition. But, on the side of the petitioner/defendent, the plaintiff has not taken steps when it is already objected by him. But, however considering the nature of the suit, the facts in the case and the relief sought in the plaint, the plea of the plaintiff/respondent has to be considered by seeking such an amendment by the plaintiff is not altering the basic structure of the case and the cause of action. Though there is a delay caused by the plaintiff, if the amendment sought by the plaintiff is not considered whatever the decision arrived by this court will not be a proper and fullfledged one. Hence, in view of the amendment sought by the plaintiff, he is entitled for the same and the order of the first appellate court, when allowed, such an amendment which automatically requires additional evidence. The order of allowing the said application by the first appellate court and remanding the case to the trial court is a proper one and it does not require any interference. Hence,



the order of the Trial Court is confirmed.

5. In the result, these Civil Revision Petition and Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The VII Additional District and Sessions Judge,
City Civil Court, Chennai.

2.The XV Assistant Judge,
City Civil Court, Chennai.

3. The Record Keeper,
V.R.Section, High Court, Madras

+2cc to M/s.Bhavanantham, Advocate SR.NO.42037

+2cc to M/s.G.Shivasurya, Advocate SR.NO.7422,7423

MG(CO)
sm:14.8.2018

CRP.No.4902 of 2012
and C.M.A.No.3899 of 2011