

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(PD).No.4808 of 2017
and CMP.No.22656 of 2017

G.Chandrasekar

..Petitioner

Vs.

G.Ramesh

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 31.08.2017 in I.A.No.771/2017 in O.S.No.226/2011, on the file of the I Additional District Munsif, Salem.

For petitioner : Mr.R.Neethi Perumal

For Respondent : Mr.D.Shivakumaran

ORDER

According to the revision petitioner, the respondent has filed a suit in OS.No.226 of 2011 before the I Additional District

Munsif, Salem for declaration that the respondent who was born on 02.06.1960 is the youngest brother of the revision petitioner. In the aforesaid suit, the revision petitioner has filed an application in IA.No.771 of 2017 under Order 7 Rule 11 of the Civil Procedure Code to reject the plaint since there is no cause of action to file the suit. The said application was dismissed. Hence, the revision petitioner has preferred the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that perusal of plaint would clearly show that there is no cause of action in the suit. Therefore, it is clear case of rejecting the plaint. The court below has not appreciated the case of the revision petitioner and erroneously dismissed the said application.

3. Per contra, the learned counsel for the respondent would submit that the court below has dismissed the said application by observing that the suit was filed in the year 2011 and written statement has also been filed. The plaintiff / PW1 has been cross examined and the case has been posted for further examination. At this stage, the revision petitioner has filed the present application only to drag on the proceedings and the same is

belated one. Hence, the present Civil Revision Petition is liable to be dismissed.

4. At this stage, the learned counsel for the revision petitioner would submit that the court below has not framed the issue, when the petitioner has specifically raised the ground in paragraph 26 of the written statement that there is no cause of action in the said suit.

5. The learned counsel for the respondent also submitted, if the issues are not framed by the trial court, this Court can pass appropriate orders for framing of additional issues and then proceed with the trial.

6. In view of the above said submissions of both the parties, this Court is inclined to pass the following orders.

(i) The order of the court below in IA.No.771 of 2017 is hereby confirmed.

(ii) In view of the consent of both the parties, the court below is directed to frame additional issues as raised in paragraph

26 of the written statement and thereafter proceed with the suit in accordance with law.

7. The Civil Revision Petition is disposed of with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

03.01.2018

Speaking / Non Speaking order
Index :Yes/No
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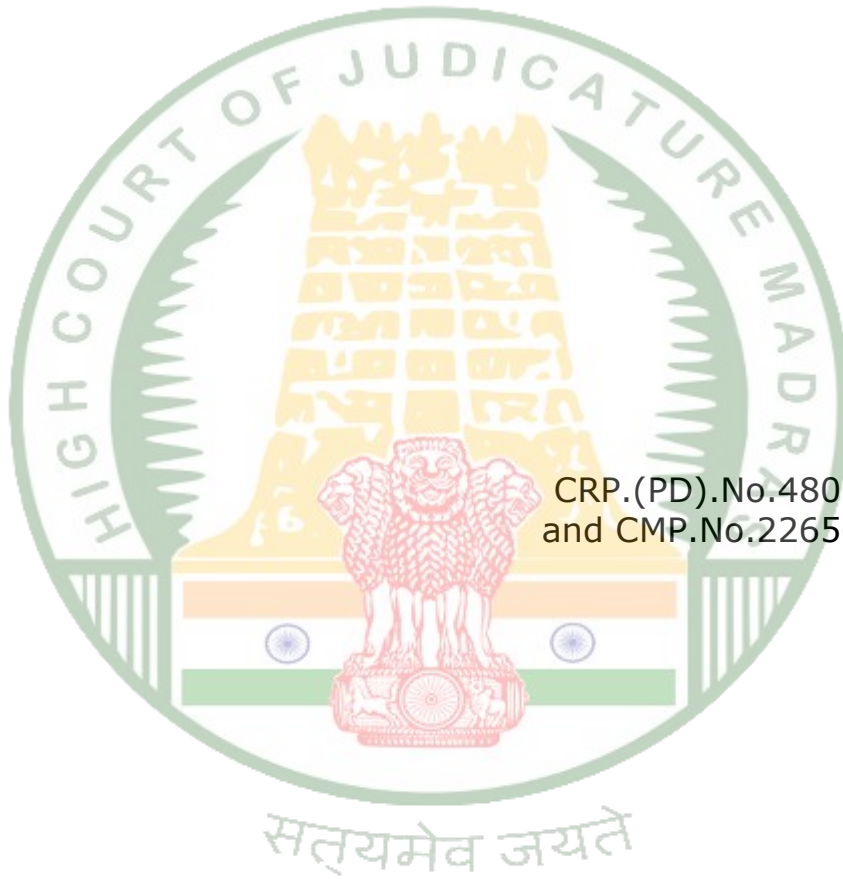
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The I Additional District Munsif,
Salem.



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D.KRISHNAKUMAR.J,

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