

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP (PD) No.506 of 2017

and

C.M.P.No.2509 of 2017

P.Indhirani

.. Petitioner/Defendant

-Vs-

Arulmigu Chokkanathar Thirukovil,
Kashilingampalayam,
Pappankulam,
Seiyur, Thekkalur,
Tirupur District.

.. Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed by the District Munsif Court Avanashi dated 06.01.2017 passed in I.A.No.1125 of 2016 in O.S.No.91 of 2006.

For Petitioner : Mr.N.Stalin

For Respondent : Mr.K.Ashok Kumar

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ORDER

This Civil Revision Petition is filed against the fair and decreetal order passed by the District Munsif Court Avanashi dated 06.01.2017 passed in I.A.No.1125 of 2016 in O.S.No.91 of 2006.

2.According to the petitioner, respondent/plaintiff has filed the aforesaid suit in O.S.No.91 of 2006 for declaration as against the petitioner/defendant herein. In the aforesaid suit the petitioner/defendant has filed written statement on 29.11.2006. Thereafter, the case was posted for trial. Trial has commenced in the aforesaid suit and posted for examination of the plaintiff side evidence. At this stage an Interlocutory Application in I.A.No.1125 of 2016 has been filed by the petitioner/defendant for permitting the petitioner to file an additional written statement. The said application was dismissed by the Trial Court.

3.The learned counsel appearing for the petitioner/defendant would submit that the petitioner/defendant has raised a plea in the additional written statement, by stating that the aforesaid suit is barred by jurisdiction and disputed Court fee paid by the respondent/plaintiff as per the market value of the property and

prayed in the counter claim for permanent injunction in the aforesaid additional written statement. Therefore, the order of the Court below is liable to be set aside.

4.Per contra, the learned counsel for the respondent/plaintiff would submit that the petitioner/defendant has filed additional written statement at the time of examination of the plaintiff side evidence. The written statement has been filed on 22.11.2006, nearly after ten years, the petitioner/defendant has filed the present petition by receiving the counter claim for granting of permanent injunction in favour of the petitioner/defendant. The prayer of injunction in the claim petition is barred by limitation. Therefore, the petitioner cannot file the present petition without any reason stated in the affidavit. Therefore, the Court below has rightly dismissed the application in I.A.No.1125 of 2016 submitted by the petitioner/defendant.

5.By considering the facts and circumstances of this case and it is an admitted fact that the petitioner/defendant has filed the written statement on 22.11.2006, the present counter claim has been filed in the year 2016. On a perusal of the affidavit, it is found that the petitioner/defendant has not stated any reason for the delay of more

than ten years for filing additional written statement. Further, commenced the trial. At that stage an application filed without any reason for delay in the affidavit. Therefore, order passed by the Court below is sustainable. Hence, there is no error illegal in the order passed by the Court below. However, so far as the jurisdiction of the Civil Court and as well as the valuation of the Court fee is concerned.

6.The prayer of consequential injunction as sought for in the additional written statement is barred by limitation and therefore the order of the Court below is confirmed in so far as the prayer for permanent injunction. In so far the remaining plea raised in the additional written statement by the petitioner/defendant, can be agitated at the time of trial in the suit. Therefore, the application to permit the petitioner to file additional written statement is allowed, except for prayer of permanent injunction.

7.In fine, the order dated 06.01.2017 passed by the District Munsif Court, Avanashi in I.A.No.1125 of 2016 in O.S.No.91 of 2006 is set aside and the Civil Revision Petition is partly allowed. Both the parties undertake to co-operate for the speedy disposal of the suit.

8.Thus, the Civil Revision Petition is partly allowed with a direction to the District Munsif Court, Avinashi to dispose of the suit as expeditiously as possible, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

15.02.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

Note: Issue Order Copy on 26.02.2018

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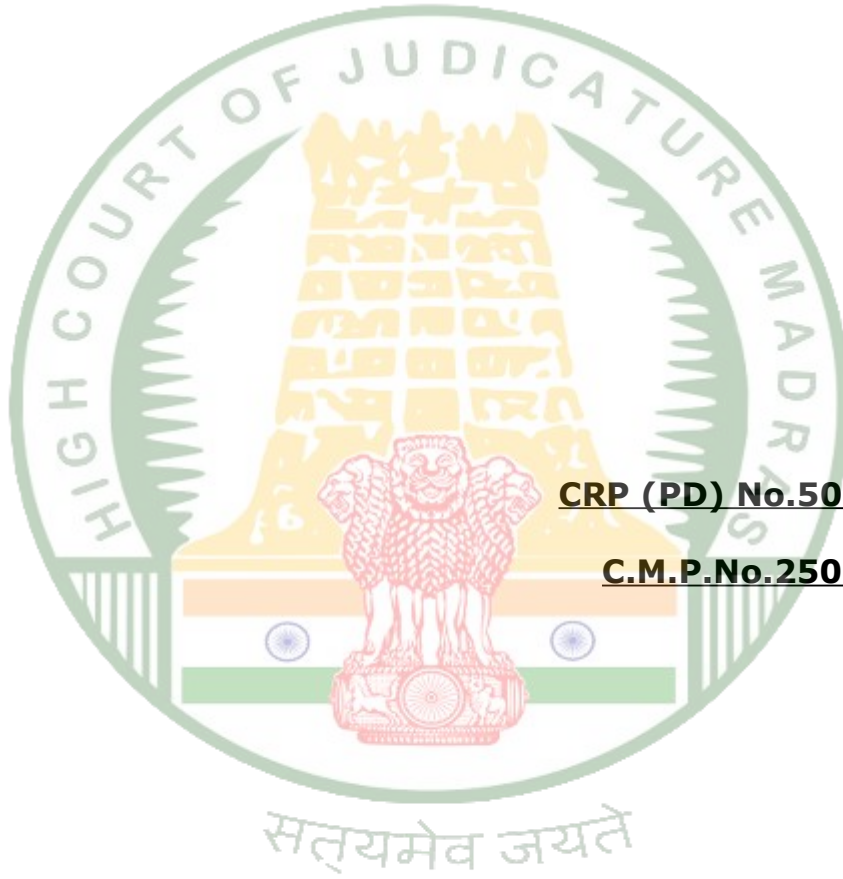
To

The District Munsif Court,
Avinashi.

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D. KRISHNAKUMAR J.,

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