

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1011 of 2015
and M.P.No.1 of 2015

Arul

..Petitioner

Vs.

Pavadai

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.08.2014 made in I.A.No.1012 of 2014 in O.S.No.497 of 2010 on the file of I Additional District Munsif Court, Kallakurichi.

For Petitioner : Mr.V.Manohar

For Respondent : Mr.S.Sounthar

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 19.08.2014 made in I.A.No.1012 of 2014 in O.S.No.497

of 2010 on the file of I Additional District Munsif Court, Kallakurichi.

2. The petitioner is plaintiff and respondent is defendant in O.S.No.497 of 2010 on the file of I Additional District Munsif Court, Kallakurichi. The petitioner filed the said suit for permanent injunction. The respondent filed written statement on 28.03.2011 and is contesting the suit. According to the petitioner, he is owner of the suit property and respondent, who is owner of the adjacent suit property, is trying to encroach the suit property. When the suit was included in the special list, the petitioner took three adjournments and then filed I.A.No.1012 of 2014 under Order VI Rule 17 and Section 151 C.P.C. for amendment of the plaint to include the relief of mandatory injunction on the ground that the respondent had encroached the suit property pending suit in the month of August 2013. In the said circumstances, the petitioner is seeking amendment of the plaint to include the relief of mandatory injunction.

WEB COPY

3. The respondent filed counter affidavit and contended that the petitioner has filed application only to drag on the proceedings, after taking adjournments and after the suit was included in the

special list for trial. The petitioner has not given nature of the construction put up by the respondent in the encroached portion and prayed for dismissal of the application.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application on the ground that the petitioner has not given any reason for not filing application immediately. According to the petitioner, the respondent encroached the portion of the suit property in August 2013, while the application was filed only in June 2014. Further if the amendment sought for is allowed, it will change the character of the suit.

5. Against the said order of dismissal dated 19.08.2014 made in I.A.No.1012 of 2014 in O.S.No.497 of 2010, the present Civil Revision Petition is filed by the petitioner/plaintiff.

6. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7. From the order of the learned Judge, it is seen that the

petitioner has not given any reason for delay in filing application for amendment. It is pertinent to note that the petitioner has filed present application after taking three adjournments, when the suit was posted in the special list for trial. Even according to the petitioner, the respondent encroached the property in the month of August 2013 and the petitioner has not given any reason that as to why he did not file the application immediately and he has filed the application in the month of June 2014. It shows that the intention of the petitioner is only to drag on the proceedings.

8. The learned Judge has considered all the facts in proper perspective and dismissed the application giving cogent and valid reason. There is no reason or circumstances warranting interference by this Court with the order of the learned Judge dated 19.08.2014.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.01.2018

Index:Yes/No

kj

To

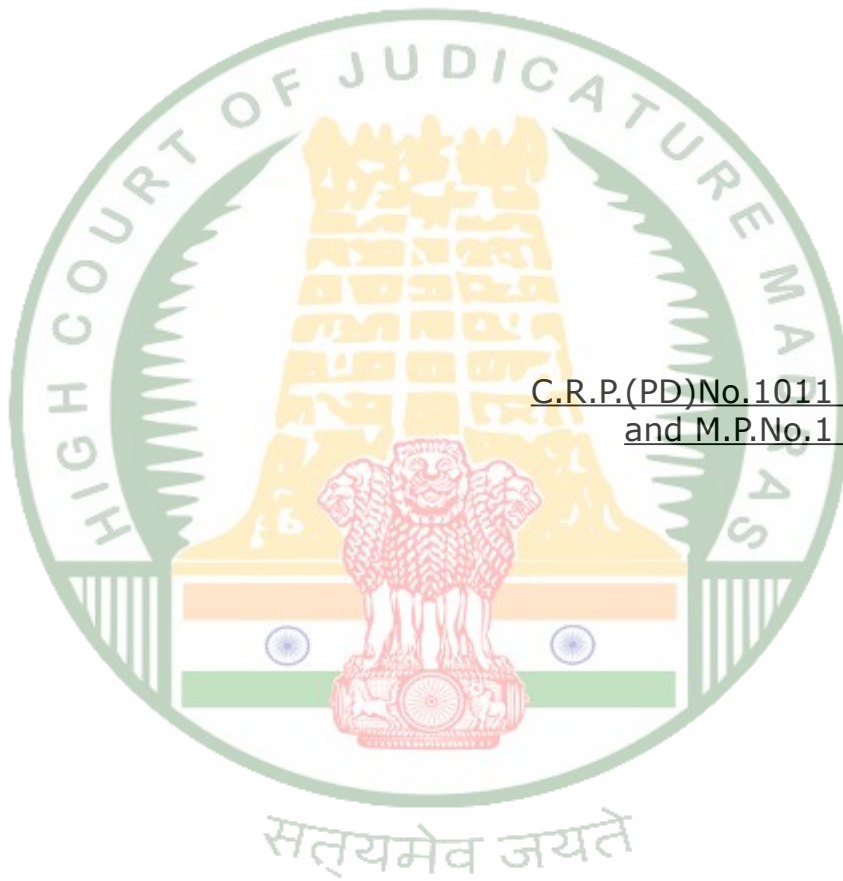
The I Additional District Munsif
Kallakurichi.



WEB COPY

V.M.VELUMANI,J.

kj



C.R.P.(PD)No.1011 of 2015
and M.P.No.1 of 2015

WEB COPY 29.01.2018