

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1115 of 2015
and M.P.No.1 of 2015

1.Subbulakshmi
2.Sasi @ Poongothai

.. Petitioners

Vs

P.Raju

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.12.2014 made in I.A.No.1669 of 2014 in O.S.No.2962 of 2013 on the file of the I Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.J.Titus Enock for
Mr.I.C.Vasudevan
For Respondent : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 18.12.2014 made in I.A.No.1669 of 2014 in O.S.No.2962 of 2013 on the file of the I Additional District Munsif Court, Coimbatore.

2. The petitioners are the defendants 1 and 2 and respondent is

the plaintiff in O.S.No.2962 of 2013 on the file of the I Additional District Munsif Court, Coimbatore. The respondent filed the said suit for mandatory injunction directing the petitioners and defendants 3 and 4 to remove unauthorised construction made in the channel, which leads from S.Nos.212 to 213/2 i.e., third item of the suit property and permanent injunction restraining the petitioners and defendants 3 and 4 from drawing water through the said channel. The petitioners filed written statement on 03.04.2014 and are contesting the suit. The petitioners filed the present application in I.A.No.1669 of 2014 under Order VII Rule 11 and Section 151 C.P.C. for rejection of plaint.

3. According to the petitioners, there is no cause of action for the respondent to file the suit. The respondent must prove the existence of the channel. First petitioner's husband and his brother/4th defendant are in possession of the suit property for more than 30 years and the suit is barred by limitation.

4. The respondent filed counter affidavit and contended that the respondent is entitled to draw water from the well situated in the property of the petitioners. The petitioners have admitted in their reply notice that the respondent is drawing water from the well and

existence of the channel. Now the petitioners are preventing the respondent from drawing water by putting up construction in the channel. The respondent has clearly stated as to how the cause of action for the suit has arisen.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, plaint and judgment relied on by the counsel for the respondent, dismissed the application holding that the question of limitation and cause of action can be decided only by appreciating the evidence let in by the parties. The learned Judge further held that the petition for rejection of plaint on the ground of non disclosing cause of action as well as suit is barred by limitation, is not maintainable.

6. Against the said order of dismissal dated 18.12.2014 made in I.A.No.1669 of 2014 in O.S.No.2962 of 2013, the present Civil Revision Petition is filed by the petitioners.

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7. Heard the learned counsel for the petitioners and perused the materials on record. Though the Civil Revision Petition is of the year

2015, the petitioners have not taken any steps to serve the respondent.

8. The petitioners are seeking to reject the plaint on the ground that there is no cause of action for the suit arose and the suit is barred by limitation. While deciding the application for rejection of plaint, the Court has to consider only the averments made in the plaint and the documents mentioned in the plaint. In the present case, the respondent has stated that the petitioners are preventing the respondent from drawing water through the channel by putting up construction in the channel. The respondent also contends that the petitioners have admitted in their reply notice, the existence of the channel and respondent is drawing water from the well in the petitioners' land through the channel. Further, the question of limitation is a mixed question of fact and law and the same can be decided only by appreciating evidence let in by the parties. Whether the cause of action as alleged by the respondent is illusory or real can be decided only by appreciating evidence let in by the parties.

9. The learned Judge has considered all the above facts and dismissed the application by giving cogent and valid reason. There is

no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 18.12.2014.

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

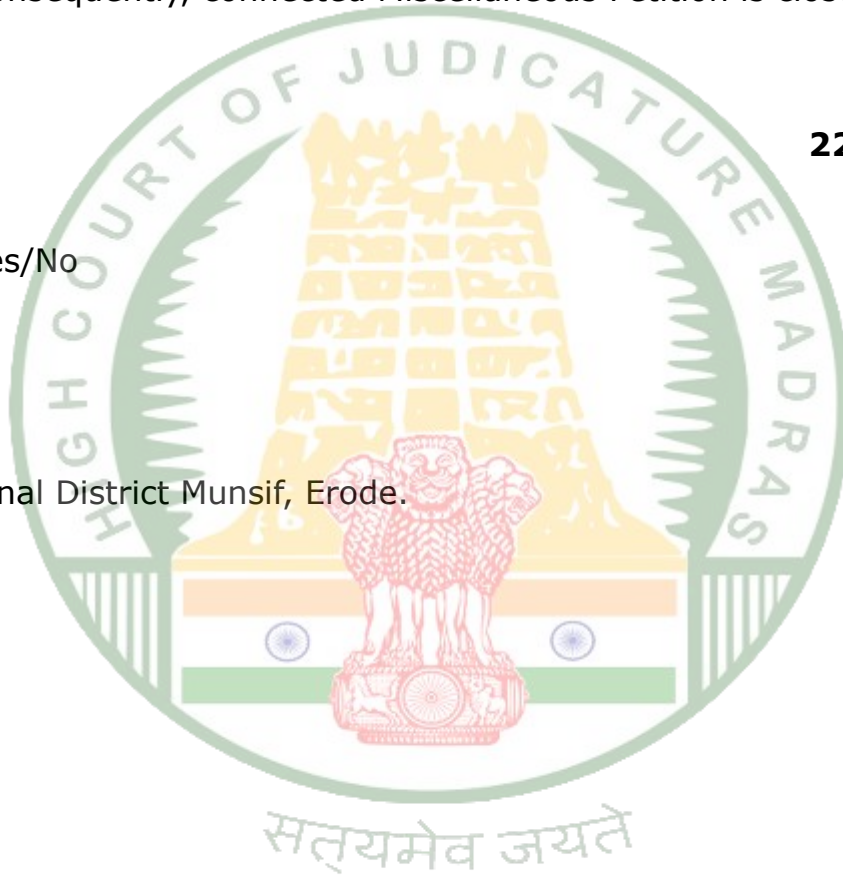
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Index:Yes/No

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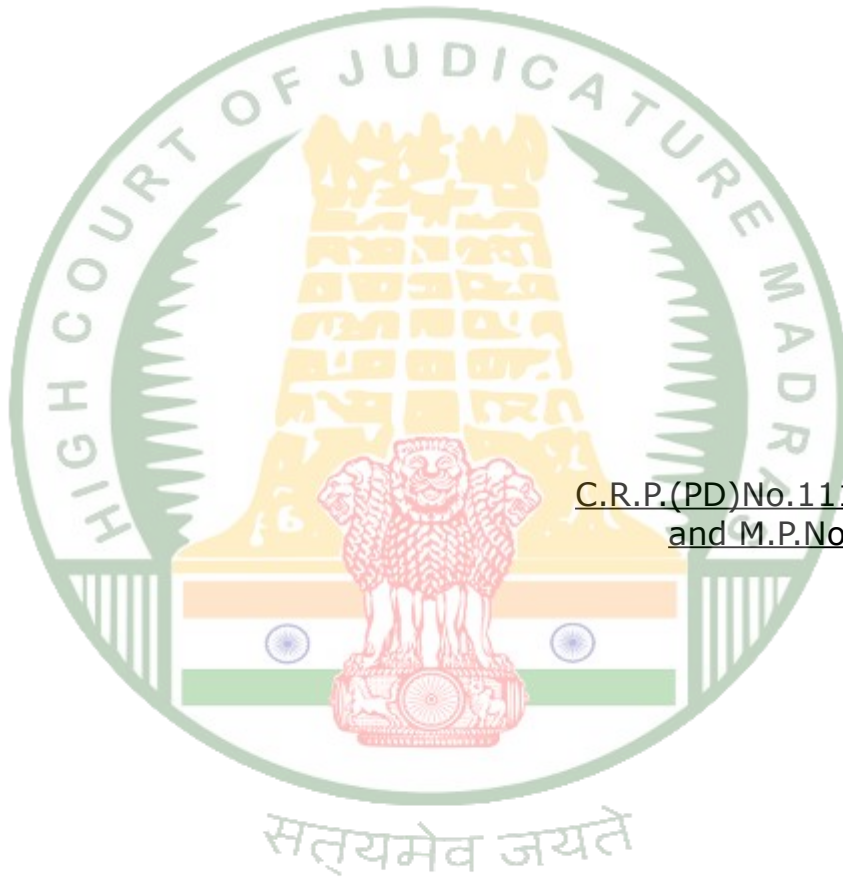
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V.M.VELUMANI,J.

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