

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.1644 of 2015  
& M.P.No.1 of 2015

1.D.Manoharan  
2.A.Arjunan  
3.Krishnakumari

.. Petitioners

(Cause title accepted vide order  
of Court dated 10.04.2015 made  
in M.P.No.1/2015 in C.R.P.SR.No.111678/2014)

Vs.

1.J.Pandian  
2.V.Parna Bass

.. Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the  
Constitution of India against the fair and decretal order dated  
21.03.2014 made in I.A.No.3805 of 2014 in O.S.No.1162 of 2003  
on the file of the XVI Assistant City Civil Court, Chennai.

For Petitioners : M/s.A.Arulmozhi  
for Mr.N.Anand Venkatesh

For Respondents : Mr.K.Sellathurai

**ORDER**

This Civil Revision Petition is filed against the fair and decretal  
order dated 21.03.2014 made in I.A.No.3805 of 2014 in  
O.S.No.1162 of 2003 on the file of the XVI Assistant City Civil Court,

Chennai.

2.The petitioners are plaintiffs and respondents are the defendants in O.S.No.1162 of 2003 on the file of the XVI Assistant City Civil Court, Chennai. The petitioners filed the said suit for declaration and permanent injunction restraining the respondents from interfering with their peaceful possession and enjoyment of the suit property. The respondents filed written statement on 21.04.2004 and are contesting the suit. Trial commenced. On behalf of the petitioners, P.W.1 has filed proof of affidavit and marked 30 documents as Exs.A1 to A30. When the suit was posted for cross examination of P.W.1 by the counsel for the respondents, the petitioners filed present I.A.No.3805 of 2014 for amendment of the plaint in O.S.No.1162 of 2013. According to the petitioners, earlier 3<sup>rd</sup> respondent along with her maternal aunt, Sagunthala and her maternal uncle Govindarajulu filed O.S.No.8333 of 1992 for bare injunction against the first respondent and one S.Jagadeesan. The said suit was decreed and on appeal, A.S.No.119 of 2000, the decree was set aside and suit was dismissed on the ground that without seeking relief of declaration, the suit for bare injunction is not maintainable. In view of the said finding, the present suit is filed. These facts were not mentioned in the present suit even though their previous Advocate was aware of the same. Further, the extent of the property by mistake was mentioned as 31 cents

instead of 30 cents. According to the petitioners, they do not know injunction and they were not aware of the averments in the plaint. In the circumstances, they sought for amendment.

3.The first respondent filed counter affidavit and submitted that in the written statement filed by the respondents on 21.04.2004 itself, they have stated about the non-mentioning of earlier suit, O.S.No.8333 of 1992 which was dismissed and A.S.No.119 of 2000 which was allowed. In spite of the same, the petitioners have filed the present application only in the year 2014, after commencement of trial and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit, materials available on record and judgments relied on by the parties, dismissed the application on the ground that petitioners were not diligent enough to file the application for amendment before commencement of trial.

5.Against the said order of dismissal dated 21.03.2014 made in I.A.No.3805 of 2014 in O.S.No.1162 of 2003, the present Civil Revision Petition is filed by the petitioners.

6.Heard the learned counsel for the petitioners as well as the

respondents and perused the materials available on record.

7.From the materials available on record, it is seen that the respondents have filed written statement on 21.04.2004 itself and in the written statement, the respondents have stated that the petitioners have not stated about the decree passed in earlier suit O.S.No.8333 of 1992 and on appeal by first respondent in A.S.No.119 of 2000, the suit was dismissed by allowing the appeal. The present Advocate entered appearance on behalf of the petitioners and filed vakalat on 30.12.2004, before ten years of filing the present petition. The petitioners filed present application only in the year 2014. The petitioners have not stated any reason for not filing the application earlier and have not alleged and proved that inspite of due diligence they could not have filed the application for amendment before commencement of trial. The learned Judge has considered all the above facts and judgments relied on by the counsel for the parties and dismissed the application in proper perspective. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 21.03.2014 made in I.A.No.3805 of 2014 in O.S.No.1162 of 2003.

8.The learned counsel for the respondents submitted that already the respondents have stated about the earlier suit in the written statement and it is part of the record and hence, it is open

to the petitioners to let in evidence based on the pleadings.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. It is open to the petitioners to establish their case by cross examining the respondents. Since the suit is of year 2003, the learned Judge is directed to dispose of the suit on day-to-day basis and in any event not later than three months from the date of receipt of a copy of this order.

13.02.2018

Index : Yes/No

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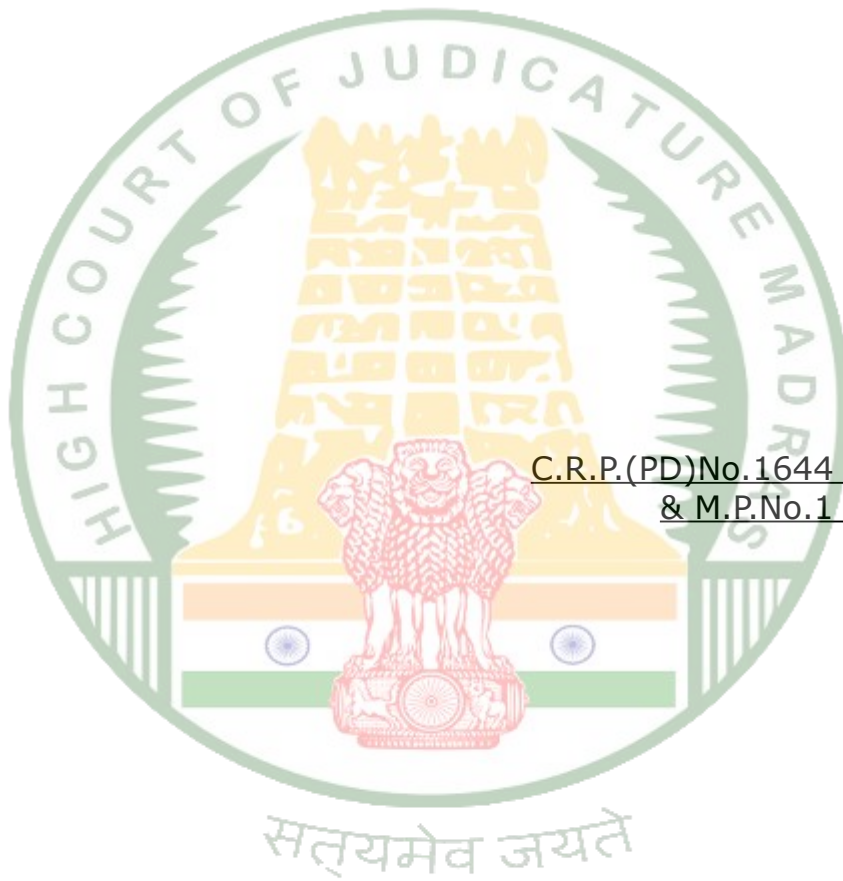
To

The XVI Judge,  
Assistant City Civil Court, Chennai.

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**V.M.VELUMANI, J.**

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