

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.817 of 2015
& M.P.No.1 of 2015

T.Duraisamy

.. Petitioner

Vs.

T.Chakravarthy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 15.12.2014 made in I.A.No.15386 of 2014 in O.S.No.2878 of 2014 on the file of the XIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.Balasubramanian

For Respondent : Mr.S.Udhayakumar

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 15.12.2014 made in I.A.No.15386 of 2014 in

O.S.No.2878 of 2014 on the file of the XIII Assistant Judge, City Civil Court, Chennai.

2. The petitioner is defendant and respondent is plaintiff in O.S.No.2878 of 2014 on the file of the XIII Assistant Judge, City Civil Court, Chennai. The respondent filed said suit for mandatory injunction directing the petitioner to remove unauthorised construction put up over the common pathway adjoining the petitioner's portion and for permanent injunction restraining the petitioner from putting up further construction over the common pathway. The respondent filed I.A.No.15386 of 2014 under Order VI Rule 17 of C.P.C. to amend the plaint to include the addition in para-5 as mentioned in the affidavit and petition.

3. According to the respondent, the pillars in common pathway are in existence, when old Kalyanamandapam was there and all the pillars are in existence for more than 40 years and by inadvertence, the same was not mentioned in the plaint.

4. The petitioner filed counter affidavit and submitted that by amendment, respondent is introducing a new case and new cause of

action. The petitioner also submitted that the respondent and other owners have put up construction over common pathway. The petitioner also put up construction over common pathway without affecting free ingress and egress.

5. The learned Judge by the order dated 15.12.2014 considering the averments made in the affidavit, counter affidavit and the fact that amendment sought for is pre trial amendment, allowed the application.

6. Against the order dated 15.12.2014 made in I.A.No.15386 of 2014 in O.S.No.2878 of 2014, the present Civil Revision Petition is filed by the petitioner/defendant.

7. From the materials available on record and order of the learned Judge, it is seen that the respondent is seeking to amend the plaint to include the averment that the pillars are in existence in common pathway for the past 40 years. This amendment will not affect the character of the suit or it will not introduce new cause of action. The petitioner has stated in the counter affidavit that he is putting up construction in common pathway without affecting the

right of the respondent and other owners from using the common pathway. Whether the petitioner has put up construction in common pathway affecting the right of the respondent and other owners of the property from using the common pathway as alleged by the respondent or not can be decided only by appreciating evidence let in by the parties. The amendment now sought for by the respondent is pre trial amendment and it will not affect the character of the suit and has not introduced any new cause of action.

8. The learned Judge considered all the above facts in proper perspective 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 15.12.2014.

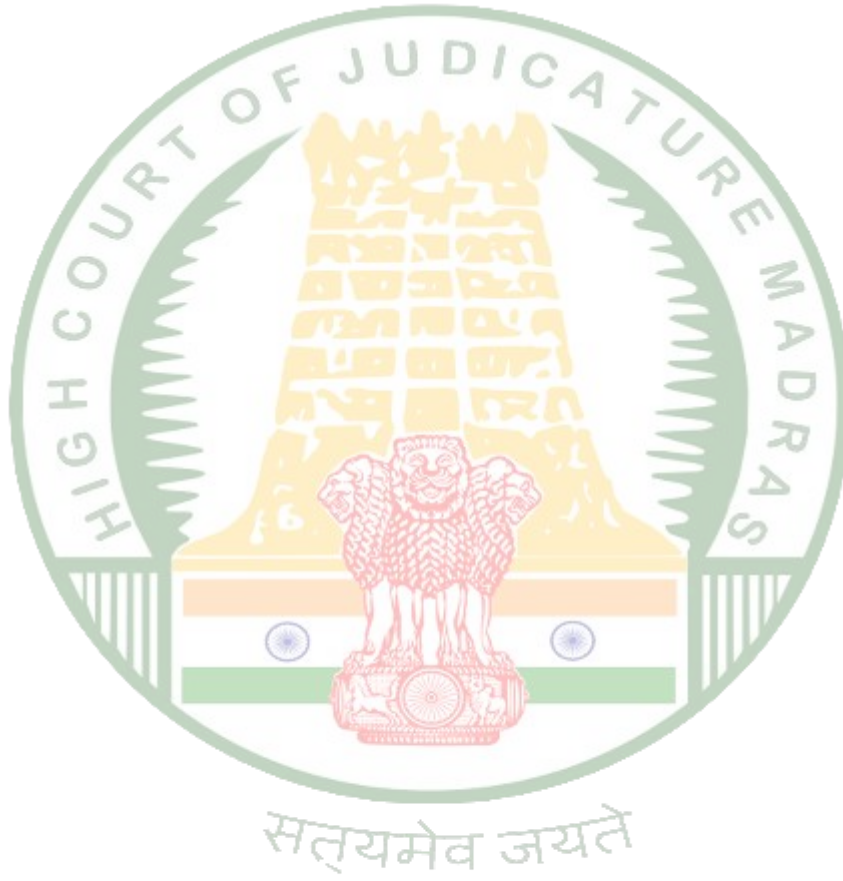
9. In the result, the Civil Revision Petition is dismissed. It is open to the petitioner to file additional written statement, if any, if he desires to file the same. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No
Speaking/Non speaking order

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To

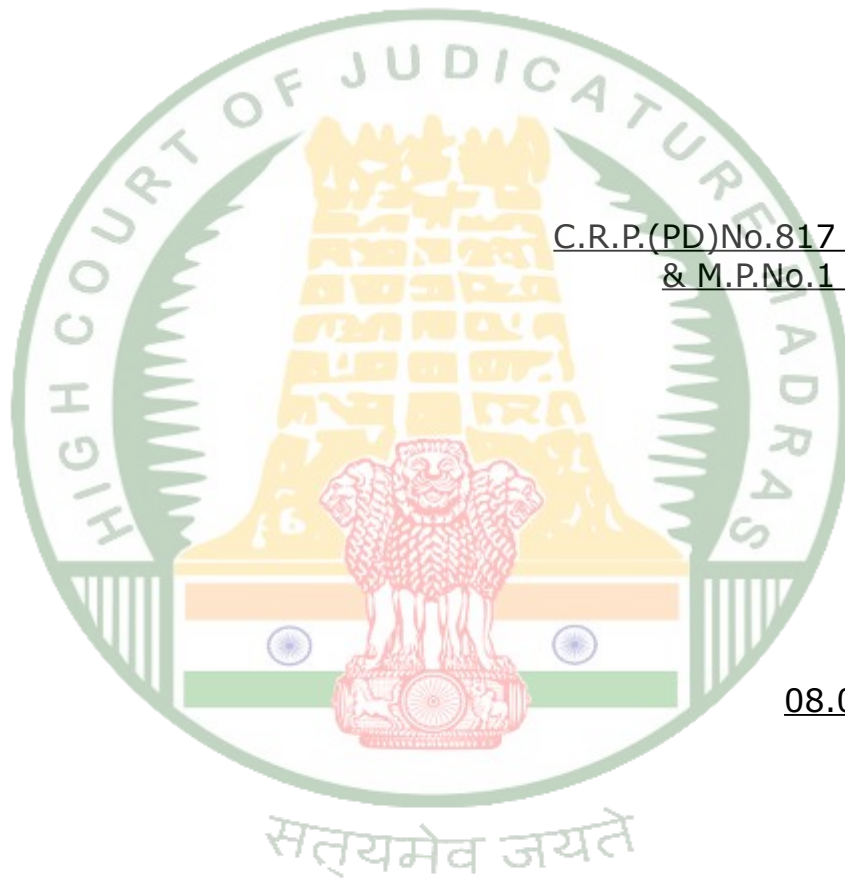
XIII Assistant Judge, City Civil Court, Chennai.



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V.M.VELUMANI, J.

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