

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

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

CRP(PD).No.1178 of 2016
and CMP.No.6444 of 2016

Kamalesan

.. Petitioner

Vs

1.Prakasam
2.Ramu
3.Chitrarasu

.. Respondents

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 13.12.2013 made in IA.No.799(A) of 2012 in OS.No.115 of 2008 on the file of the District Munsif cum Judicial Magistrate, Pappireddypatti.

For Petitioner : Mr.Arun Datten
for Mr.C.Munusamy

For Respondents : Mr.K.Karthi Asath
for Mr.V.Nochoolas

ORDER

According to the revision petitioner, the petitioner / plaintiff filed a suit in OS.No.115 of 2005 on the file of the District Munsif cum Judicial Magistrate, Pappireddypatti for declaration of title and permanent injunction. The respondents filed written statement on

16.11.2016. In the aforesaid suit, the revision petitioner has filed an application in IA.No.799 of 2012 under Order 6 Rule 17 to amend the plaint as well as cause of action and prayer in the aforesaid suit. Counter affidavit filed by the respondents, by considering the objection of the respondents, the court below has dismissed the application. Challenging the aforesaid order, the revision petitioner has preferred the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that Advocate Commissioner has submitted the report. Thereafter, the revision petitioner has filed the present application for amendment in the aforesaid suit. If the said application is allowed, no prejudice would be caused to the respondents. Without considering the contention of the revision petitioner, erroneously dismissed the instant application. Therefore, the order of the court below is liable to be set aside.

3. The learned counsel for the respondents would submit that the aforesaid suit is of the year 2005 and the trial was commenced on 03.08.2012. At the time of examination of PW2, the present application has been filed to amend the averments, cause of action and prayer in the suit suit, hence the same is not maintainable.

In the light of the amended provisions under Order 6 Rule 17 of the Civil Procedure Code, the order of the court below is perfectly valid.

Hence, the Civil Revision Petition is liable to be dismissed.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents and perused the materials available on record.

5. It is an admitted fact that the aforesaid suit is of the year 2005, for permanent injunction and written statement has been filed in the year 2006. In the written statement, the respondents have denied the averments in the plaint and also stated that there is no bore well as alleged by the plaintiff. After the denial of the respondents, the revision petitioner has not taken steps to file appropriate application for amendment of plaint, cause of action and the prayer in the suit. Further, the revision petitioner also sought for amendment of prayer by claiming the adverse possession of the property. Therefore, the prayer as sought for in the instant application is also barred by limitation.

6. In the case of *L.C.Hanumanthappa (died) represented by his LR's Vs.H.B.Shivakumar* reported in **(2015) 6 CTC 562**, wherein the Hon'ble Supreme Court has held as follows.

"14. Given this statement of the law, it is clear that the present amendment of the plaint is

indeed time-barred in that the right to sue for declaration of title first arose on 16th May, 1990 when in the very first written statement the defendant had pleaded, in para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. The only question that remains to be answered is in relation to the doctrine of relation back insofar as it applies to amendments made under Order VI Rule 17 of the Code of Civil Procedure.

19. The facts in the aforesaid case were that the plaintiffs had, on the basis of the material facts stated in the plaint, claimed damages on the basis of the tort of conversion. It had been held by the courts below that on the pleading and on the evidence such claim must fail. At the stage of arguments in the Supreme Court, the plaintiff applied to the Supreme Court for amendment of the plaint by raising an alternative plea on the same set of facts, namely, a claim for damages for breach of contract for non-delivery of the goods. The respondents in that case resisted the said plea for amendment, stating that a suit based on this new cause of action would be barred by limitation. This Court, while allowing the said

amendment, stated that no change needs to be made in the material facts pleaded before the court all of which were there in support of the amended prayer. In any case, the prayer in the plaint as it originally stood was itself general and merely claimed damages. Thus, all the allegations which were necessary for sustaining a claim of damages for breach of contract were already there in the plaint. The only thing that was lacking was the allegation that the plaintiffs were in the alternative entitled to claim damages for breach of contract. In the facts of the said case, this Court held:-

"It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice."

7. Therefore, in the light of the decision cited supra, the said application is not maintainable and the same is barred by limitation. Further, the trial court has commenced, the evidence of

<http://www.judis.nic.in> PW3 was already examined, hence, the present application cannot be

entertained and the order of the court below is perfectly valid. There is no warrant to interfere with the order passed by the court below. Hence the Civil Revision Petition is liable to be dismissed.

8. The Civil Revision Petition fails and accordingly the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

20.03.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

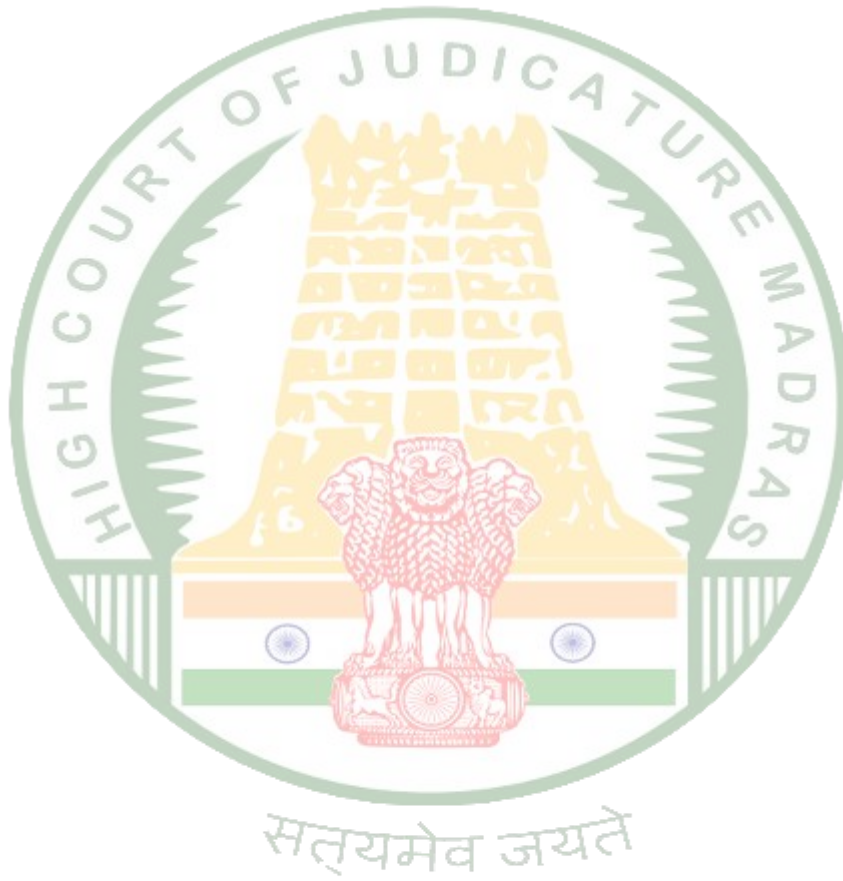
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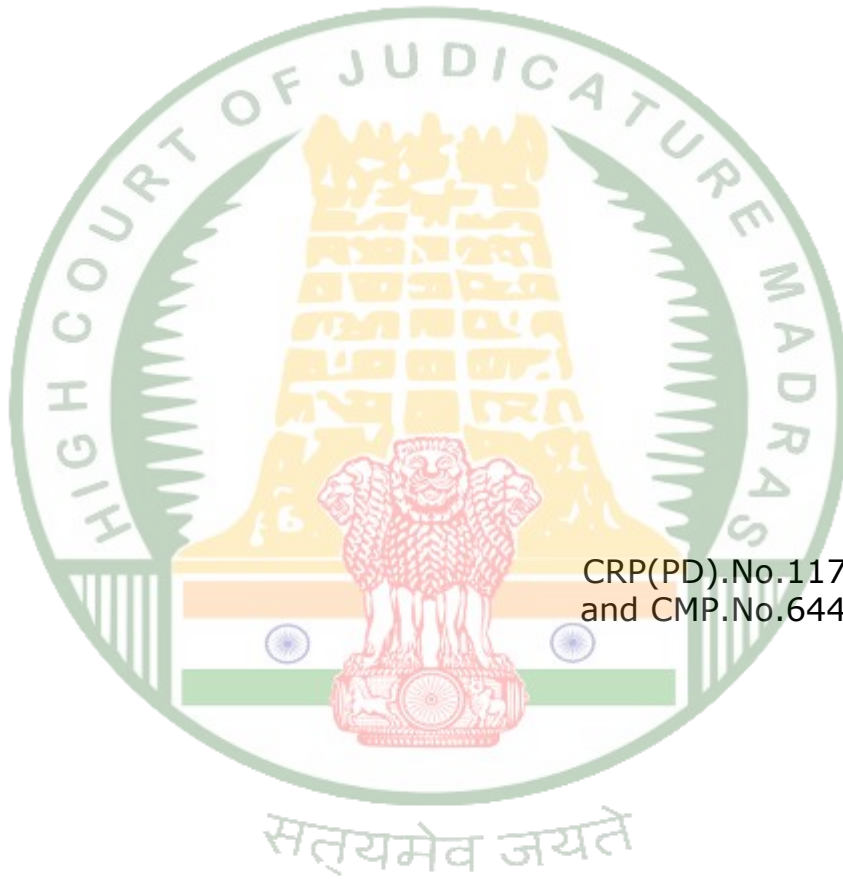
The District Munsif cum Judicial Magistrate,
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