

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.3.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3397 of 2016

1 Pavayee
2 Muthulakshmi ... Petitioners/Plaintiffs

Vs

1 Sevanteeswaran
2 Ramasamy ... Respondents/Defendants

This Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order dated 20.08.2016 made in I.A.No.397 of 2016 in O.S.No.123 of 2012 on the file of the Sub Court, Attur.

For Petitioners : Ms.P.Saritha
For Respondents : Mr.L.Rajendran

ORDER

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The petitioners have filed a suit in O.S.No.123 of 2012 before the Sub Court, Attur for partition by metes and bounds. In the aforesaid suit, second defendant/first respondent herein has filed an application under Order

VIII Rule 9 C.P.C. by contending that while preparing written statement, some documents could not be filed as the counsel engaged by him was suffering from illness and now, he is no more. Thereafter, when P.W.1 was cross examined, the second defendant came to know that an important document has not been filed and therefore, filed the instant application to file an additional written statement along with documents and the same was allowed by the court below. Challenging the said order, the plaintiffs approached this Court to set aside the impugned order.

2 According to the learned counsel for the petitioners/plaintiffs, when P.W.1 was cross examined, the instant application in I.A.No.397 of 2016 has been filed at the belated stage is not only an attempt to fill up the lacuna but also attempting to alter his pleadings, which is not in consonance with the original written statement. Therefore, the order passed by the court below is liable to be dismissed.

3 On the contrary, the learned counsel for the respondent submits that the counsel engaged by the second defendant/first respondent herein is no more and he engaged another counsel. Thereafter, at the time of cross examination of P.W.1, it came to light that some relevant documents were not filed and counter claim was not made. Therefore, the first

respondent has filed the instant application to file additional written statement and satisfied the court below. No prejudice caused to the petitioners by allowing the said application. Therefore, the trial court has rightly allowed the said application.

4 A perusal of the impugned order shows that the court below considered the fact that the respondent filed additional written statement along with six documents. Some of the facts narrated in the additional written statement were not stated in the original written statement. However, since P.W.1 was not cross examined, the court below allowed the application to file additional written statement. The court below being satisfied with the reason stated in the affidavit filed in support of the application, rightly allowed the application. Therefore, there is no warrant to interfere with the order passed by the court below.

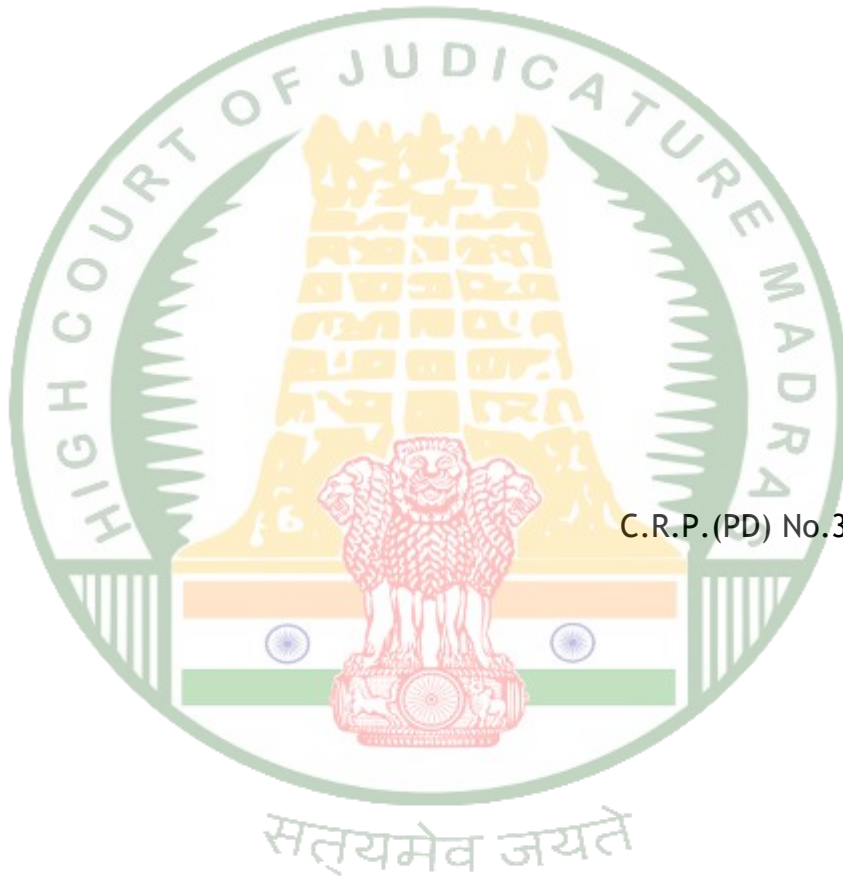
5 In fine, the Civil revision petition fails and the same is dismissed. No costs.

05.03.2018

Index: Yes/No
vaan
To
The Sub Court, Attur

D.KRISHNAKUMAR, J.

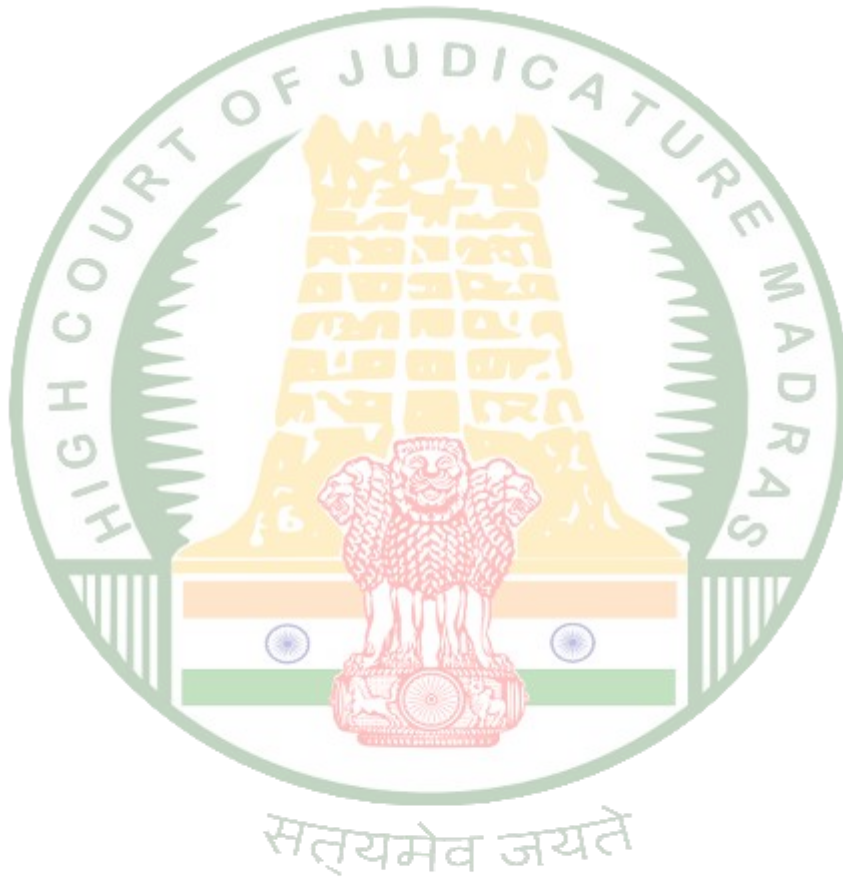
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