

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.2.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3786 of 2016 and C.M.P.No.19297 of 2016

1 Revathi
2 M.Sivakumar

...

Petitioners/Defendants

Vs.

1 Gunavathi
2 Saraswathi
3 Gunasekaran

...

Respondents/Plaintiffs 2 to 4

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order and decretal order dated 23.09.2016 made in I.A.No.263 of 2016 in O.S.No.130 of 2011 on the file of the II Additional District Munsif, Erode.

For Petitioners : Mr.T.M.Hariharan
For Respondents : Mr.Sunil for
Mr.V.Balamurugane

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ORDER

According to the petitioners, the respondents have filed an application in I.A.No.263 of 2016 to include the relief of recovery of possession of the 2nd item of suit property by way of amendment at the fag end of the

trial. The trial court erroneously allowed the application. Challenging the said order, the petitioners have filed the present Civil revision petition before this Court.

2 According to the learned counsel for the petitioners, under Order VI Rule 17 of C.P.C. the application filed by the respondents at the fag end of the trial is not maintainable. Therefore, the order passed by the court below is liable to be set aside.

3 Per contra, Mr.Sunil, learned counsel for the respondents would submit that the respondents have filed the suit for declaration and mandatory injunction and consequential relief of recovery of possession. It is not the case of the petitioners that the prayer as sought for by the respondents is barred by limitation. Therefore, no prejudice would be caused to the petitioners in allowing the said application. If the petitioners are having any objection, they can raise all the objections at the time of trial in the suit.

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

5 A perusal of record would show that the respondents have already paid necessary court fee on the basis of market value of the second item of suit property and also sought for mandatory injunction. In order to avoid

technical defect, the respondents have filed the instant application for including the prayer for delivery of possession by way of amendment. Therefore, by amending prayer in the suit will not change the nature and character of the suit and there is no prejudice would be caused when consequential relief is sought for in the said prayer. The order of the court below is sustained. Therefore, there is no warrant to interfere with the order passed by the court below, however, this court feels that the same shall be allowed by way of compensation to the petitioners by imposing cost on the respondents. The respondents are directed to pay cost of Rs.10,000/- to the petitioners within a period of four weeks from today.

6 The Civil revision petition stands partly allowed. Connected miscellaneous petition is closed.

13.2.2018

Speaking/Non Speaking order

Index: Yes/No

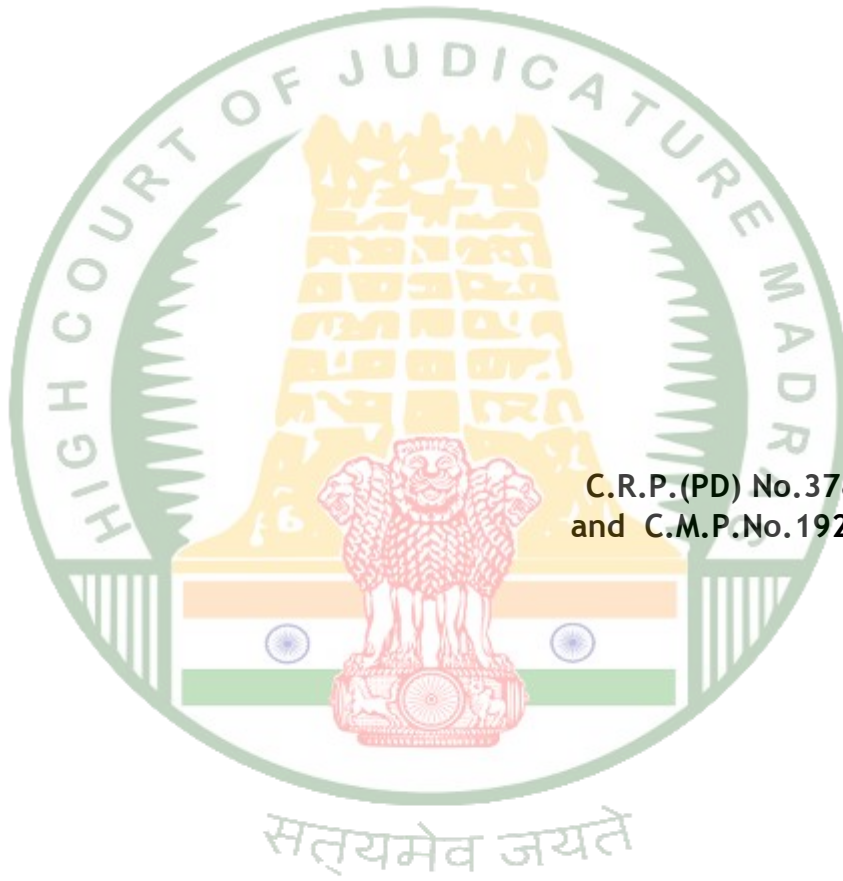
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To

The II Additional District Munsif, Erode.

D.KRISHNAKUMAR,J.

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Dated: 13.2.2018