

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(PD).No.2677 of 2009
and
MP.No.1 of 2009

1.S.M.Girija

2.Dharam chand

...Petitioners

vs.

Arulmighu Kapaleeswarar Temple,
Mylapore, Madras - 4,
Rep. by Deputy Commissioner/
Executive Officer.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 11.06.2009 in IA.No.1068 of 2008 in OS.No.1298 of 2007 on the file of the III Assistant City Civil Court, Chennai.

For Petitioners : Mrs.Hemasampath,
Senior Counsel

For Respondent : Mrs.Usha Tholgappian

ORDER

The civil revision petitioners are the defendants in OS.No.1298 of 2007 on the file of the III Assistant Judge, City Civil Court, Chennai. The respondent / plaintiff filed the above suit for recovery of possession of suit property bearing Door No.238, R.K.Mutt road, Mylapore, Chennai - 600 004 within the boundaries stated in the plaint schedule. The respondent/ plaintiff also prayed for recovery of a sum of Rs.29,274/- (Rupees Twenty Nine Thousand Two Hundred and Seventy Four Only) as damages for use and occupation from the defendants. The defendants filed their written statements and both the parties went for trial. At this juncture, the respondent / plaintiff filed IA.No.1068 of 2008 under Order VI Rules 16 and 17 of Code of Civil Procedure praying to amend the suit property as detailed hereunder:

"1. The D.No.238 it may be amended as D.No.237.

2. At the end of the schedule of property in words " the extent of 1023 sq. ft. may be added."

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2. The learned III Assistant Judge, City Civil Court, Chennai after analysing the evidence on record allowed the said application vide his fair and decretal orders dated 11.06.2009. Aggrieved over the same, the

defendants have filed the present Civil Revision Petition.

3. Mrs.Hemasampath, learned senior counsel appearing for the revision petitioners contended that the trial court has committed an error in allowing the amendment petition filed by the respondent / plaintiff since the respondent / plaintiff wanted to substitute the 'Door No.237' instead of 'Door No.238'. Her specific contention is that Door No.237, R.K.Mutt road, Mylapore, Chennai - 600 004 is a private land which belonged to one Kusumlatha.

4. *Per contra*, the learned counsel appearing for the respondent/ plaintiff contended that as far as the identity and the measurement of the property is concerned, there is no dispute and therefore, the orders passed by the trial court cannot be found fault with. She further prayed this court to grant her permission to file a fresh amendment petition before the lower court.

5. A perusal of the records shows that originally the suit property was shown as Door No.238, R.K.Mutt road, Mylapore, Chennai - 600 004. The respondent/ plaintiff wanted to substitute 'Door No.237' instead of 'Door No.238' and also to include the measurement of the suit property as 1023 sq.

feet. Even as per the respondent / plaintiff, the suit property's western boundary is Door No.237, R.K.Mutt road, Mylapore, Chennai - 600 004 and therefore the door number of the suit property cannot be 237 as alleged by the respondent / plaintiff. It is contended by the revision petitioners / defendants that the Door No.237 belongs to a private party. However, the learned III Assistant Judge, City Civil Court, Chennai without considering these aspects had allowed the petition in IA.No.1068 of 2008. In the circumstances, the orders passed by the learned III Assistant Judge, City Civil Court, Chennai is liable to be set aside.

6. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

7. Since the suit in OS.No.1298 of 2007, on the file of the III Assistant Judge, City Civil Court, Chennai is pending for more than 10 years, the learned Judge is directed to dispose of the case within a period of six months from the date of receipt of a copy of this order.

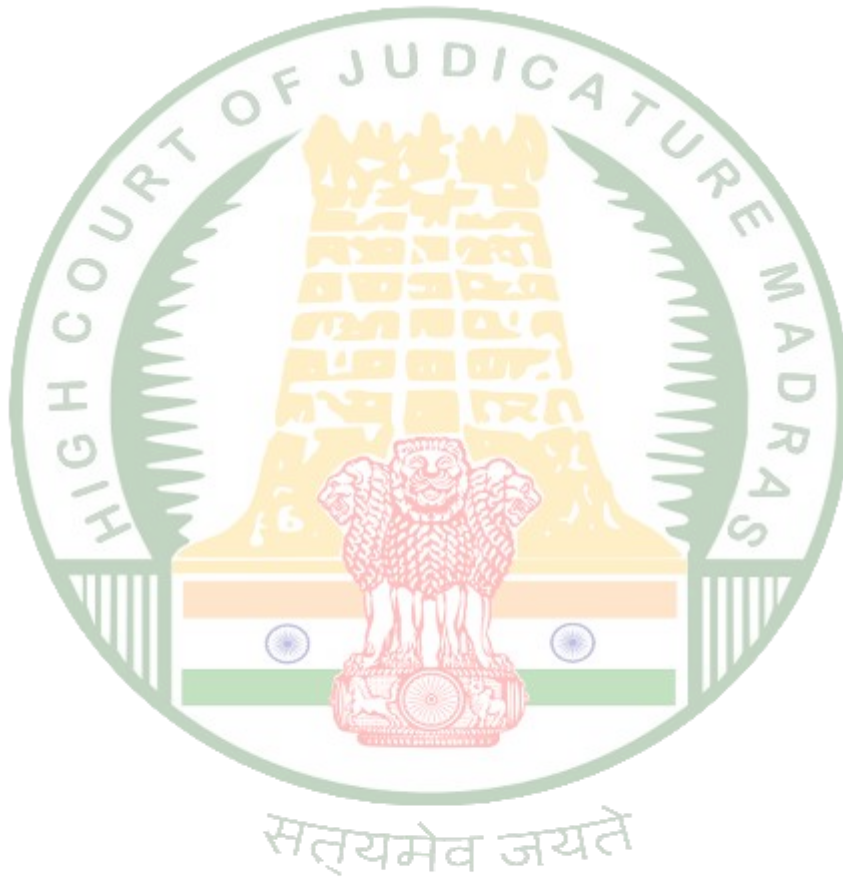
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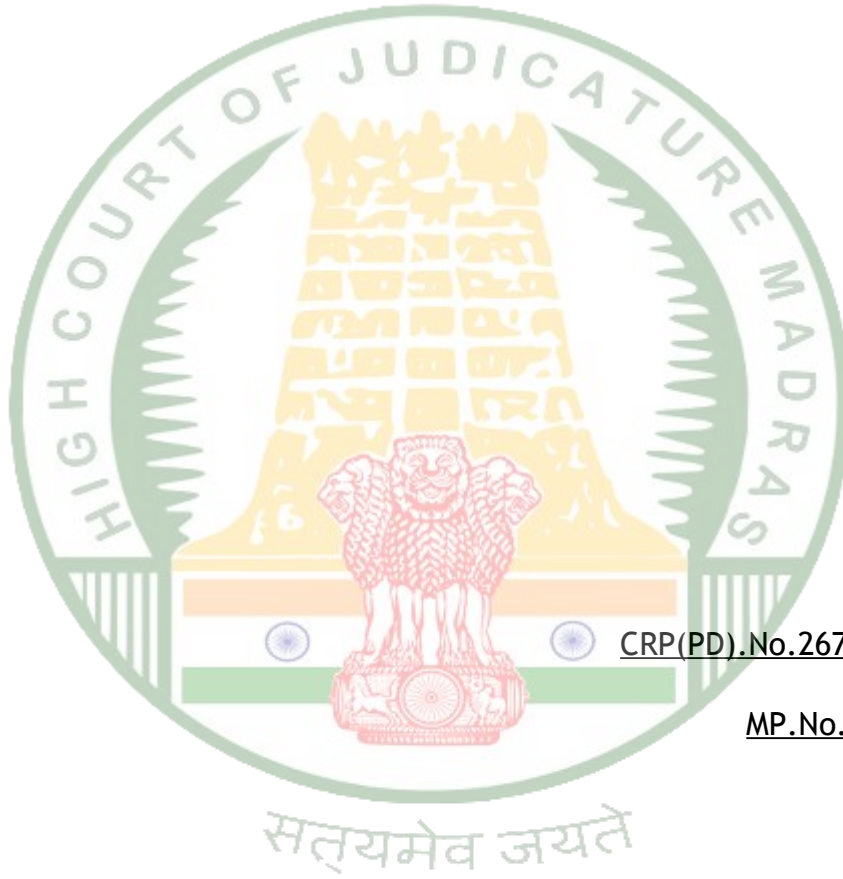
The III Assistant City Civil Court,
Chennai.



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R.HEMALATHA, J.

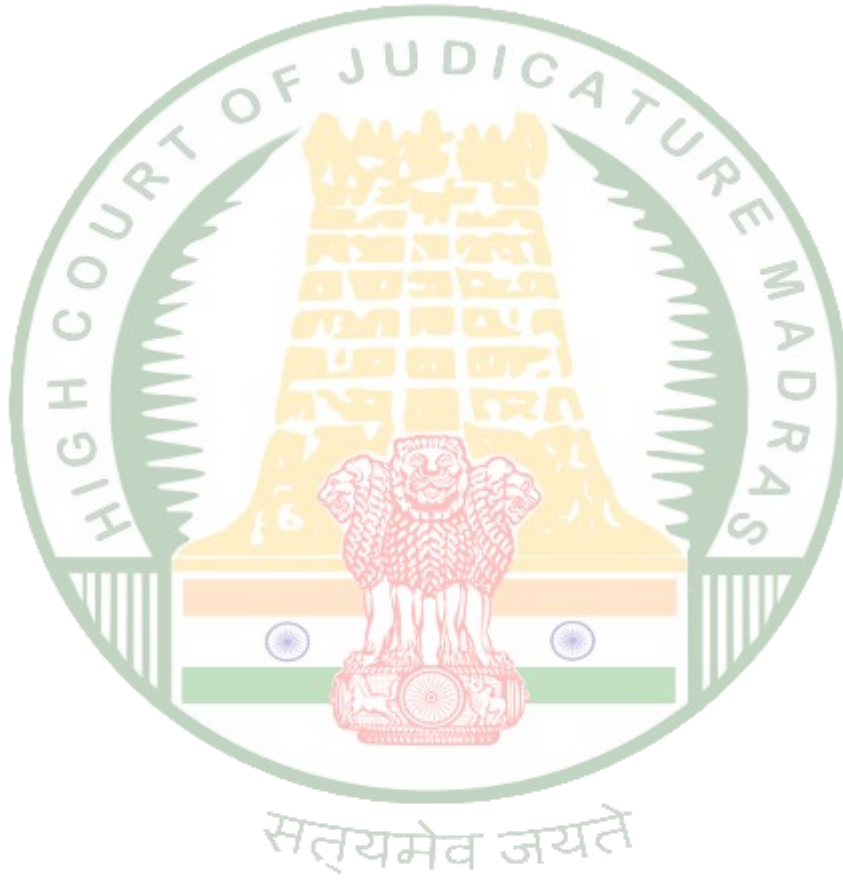
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