

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

C.R.P.(PD) No.1511 of 2015

and

M.P.No.1 of 2015

1.Raju

2.Damodharan

... Petitioners

Vs.

R.Mallika

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order of the III Additional District Munsif Court at Kallakurichi, dated 07.01.2015 in I.A.No.2114 of 2014 in O.S.No.417 of 2012.

For Petitioners : Mr.P.Valliappan

For Respondent : Mr.K.Babukumar

ORDER

The petitioners are the plaintiffs in the suit in O.S.No.417 of 2012. The suit has been filed for permanent injunction. While the suit is pending before the Trial Court, the respondent/defendant constructed bathroom and water tank in the suit schedule property.

Aggrieved by the said construction, the petitioners filed amendment petition in I.A.No.2114 of 2014 under Order 6 Rule 17 of Civil Procedure Code, seeking amendment of prayer and pleadings in the plaint. The said application was dismissed by the Trial Court, against which, the present Civil Revision Petition has been preferred by the petitioners.

2.The learned counsel for the petitioners would submit that the Trial Court has dismissed the application filed by the petitioners on the ground that though the petitioners/plaintiffs have stated in their petition that the bathroom and water tank were constructed in the year 1988 itself, the said fact has not been disclosed in the plaint. Further, they have filed the petition after the case was posted in the special list for hearing. The learned counsel for the petitioners would further submit that the petitioners are not able to file any alternative suit mentioning the extent. Hence, this Court may grant liberty to the petitioners to file a fresh application on the same cause of action under Order 6 Rule 17 of C.P.C., by giving clear details of the amendment.

3.The learned counsel for the respondent would submit that he does not have any objection with regard to the petitioners filing fresh application by mentioning clear details of the amendment.

4. Heard both sides.

5. In view of the above submissions made by the learned counsel on either side, this Court is inclined to set aside the order 07.01.2015, passed in I.A.No.2114 of 2014 in O.S.No.417 of 2012 by the learned III Additional District Munsif at Kallakurichi, with liberty to the petitioners to file a fresh application on the same cause of action under Order 6 Rule 17 of C.P.C., by mentioning clear details of the amendment. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.04.2019

kas

Speaking Order/ Non Speaking Order

Index : Yes/ No

Internet: Yes/ No

सत्यमेव जयते

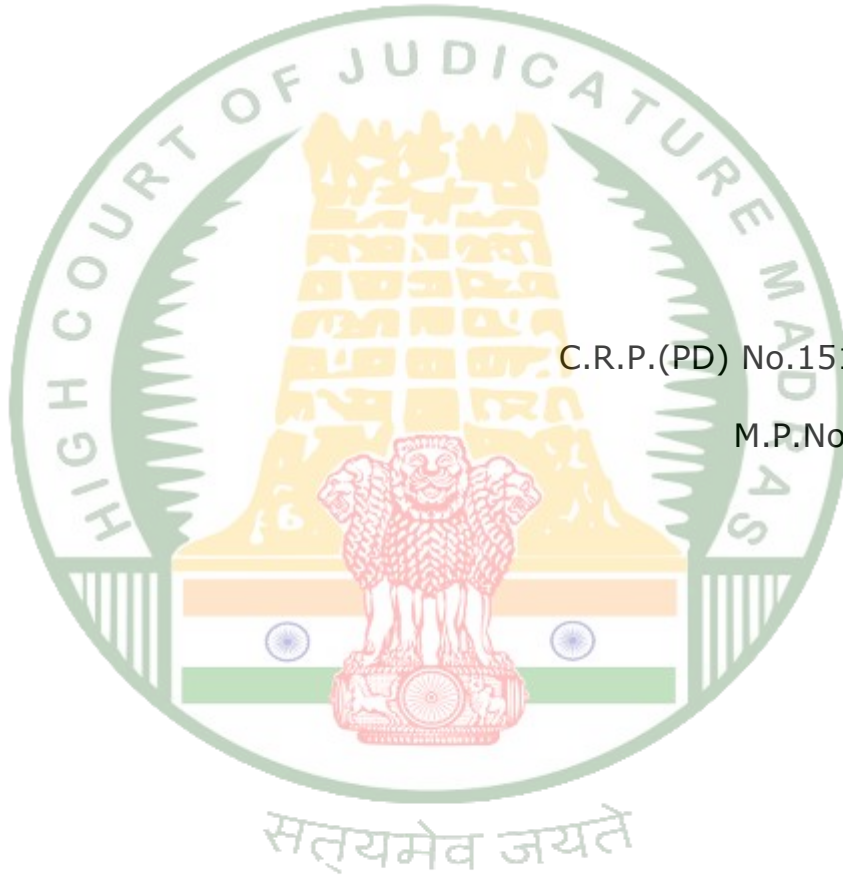
To

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1. The III Additional District Munsif,
Kallakurichi.

2. The Record Keeper,
V.R. Section,
High Court,
Chennai.

M.DHANDAPANI, J.
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