

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.1451 of 2014

Muthusamy

... Petitioner

Vs.

1.Srirangan

2.Nainamalai

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the fair and final order dated 10.12.2011 passed in I.A.No.74 of 2011 in A.S.No.10 of 2010 on the file of Principal District Judge, Perambalur against the fair and final order dated 02.07.2010 in O.S.No.152 of 2008 on the file of Subordinate Court, Perambalur.

For Petitioner : Mr.M.John Kennedy

For Respondents : No appearance

ORDER

The present Civil Revision Petition is filed against the fair and decretal order dated 10.12.2011 in I.A.No.74 of 2011 in A.S.No.10 of 2010 passed by the Principal District Judge, Perambalur.

2.The Petitioner was the plaintiff in O.S.No.152 of 2008 before the Subordinate Court, Perambalur. The suit was filed for specific performance to execute a sale deed in respect of the suit schedule property pursuant to an agreement. The suit was dismissed on 02.07.2010.

3. In the suit before the subordinate Court, the respondents admitted having received Rs.50,000/- by acknowledging the same at the back of the agreement which was sought to be reneged. The subordinate court did not order refund of the amount, though, there was an admission regarding receipt of Rs.25,000/- in the written statement.

4. Aggrieved by the judgment and decree, the petitioner preferred an appeal vide A.S.No.10 of 2010 before the Principal District Judge, Perambalur.

5. Thereafter, the petitioner filed I.No.74 of 2011 to amend the plaint to incorporate a prayer for refund of advance paid by the petitioner to the respondents. The petitioner claimed to have paid a sum of Rs.1,88,000 as advance. According to the petitioner, the respondents had also admitted receipt of Rs.50,000/- in paragraph 7 of the written statement.

6. The Court after considering the arguments had held that the Appellate Court cannot permit the amendment to pleadings, if the opposite party was likely to suffer an irreparable loss.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the documents and considered the relevant case laws.

8. Refusal to amend the plaint based on the admission in paragraph 7 of the written statement would result in denial of justice. It cannot be said that such amendment would be barred by limitation or prejudice would be caused to the respondent. In fact, the Court itself could have also moulded the relief and ordered refund the amount based on the averments and admission in the written statement. In several decisions rendered in the context of

Specific Relief Act, 1963, the Court has allowed amendment to pleadings at the first appeal stage. It may be useful to refer to the decision of the Hon'ble Supreme Court in ***Rachakonda narayana vs. Ponthaia Parvathamma***, (2001) 8 SCC 173: AIR 2001 SC 3353, wherein it was held that the relief under the latter part of Section 12(3) can be pleaded not only in the plaint when the suit is laid but also at the appellate stage. An appeal is a continuation of the suit. When an appellate court hears an appeal, the whole matter is at large. The appellate Court can go into any question relating to rights of the parties which a trial Court was entitled to dispose of provided the plaintiff possesses that right on the date of filing of the suit .

9. In my view the order passed by the Court deserves to be interfered and is liable to be set aside and is hereby set aside. The Appeal Suit is of the year 2010. Therefore, the Appellate Court is therefore directed to take up the appeal and complete the proceedings and dispose the same within a period of six months from the date of receipt of a copy of this order after giving liberty to the respondents to raise defences on the merits of the case.

10. The Civil Revision Petition is allowed with above observations. No costs.

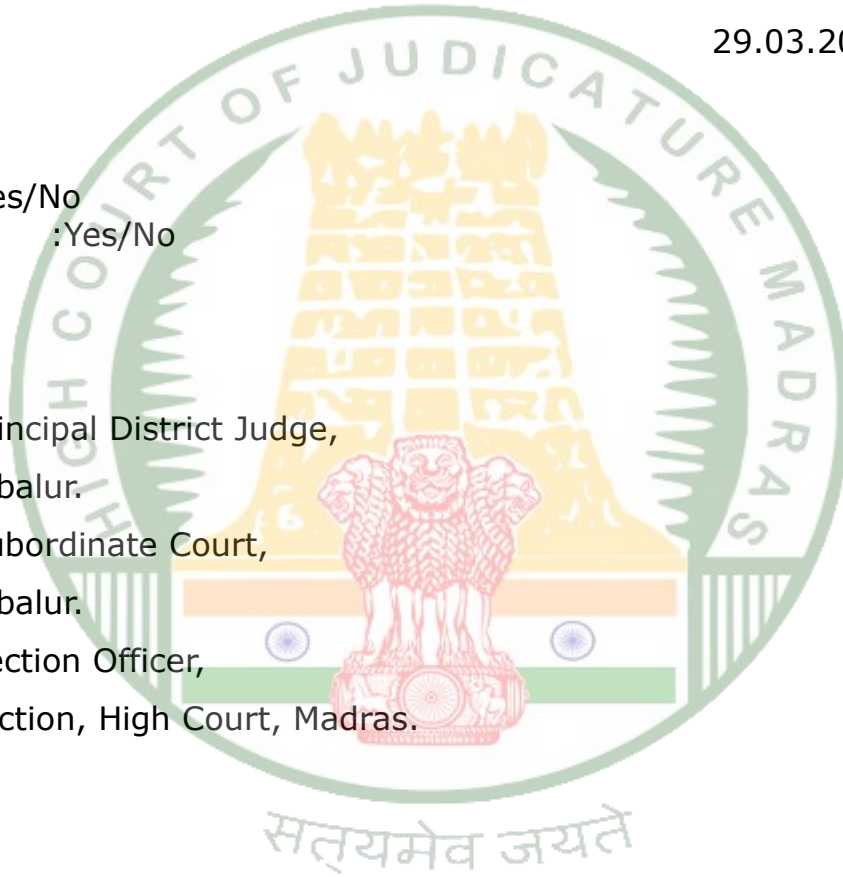
29.03.2019

Index:Yes/No
Internet :Yes/No

jen

To

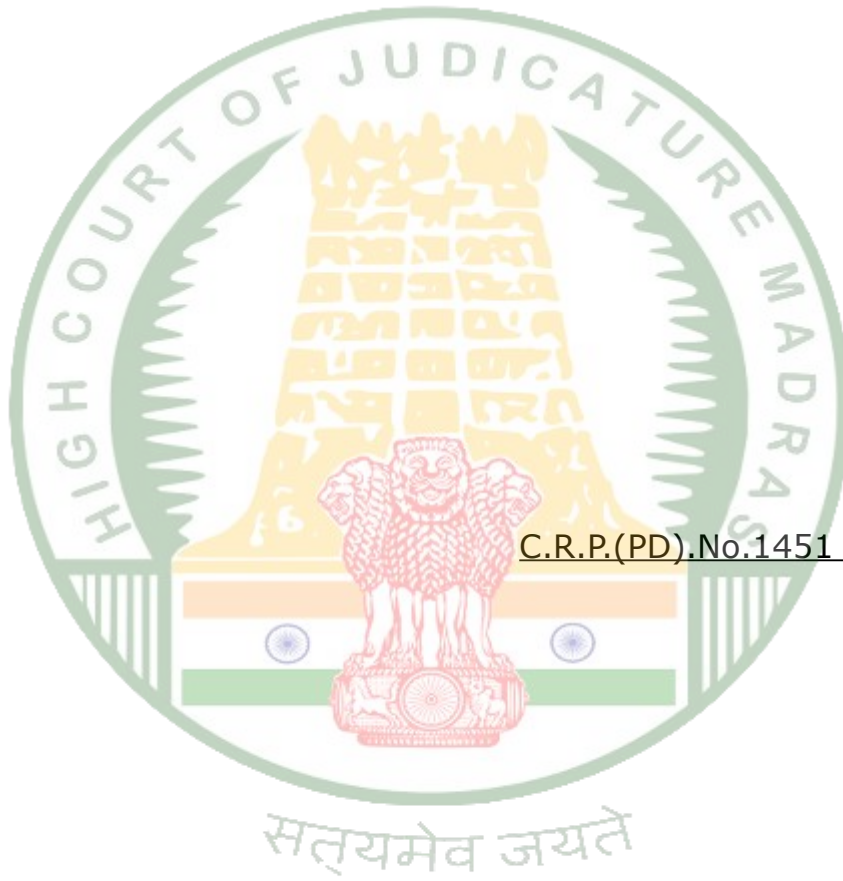
- 1.The Principal District Judge,
Perambalur.
- 2.The Subordinate Court,
Perambalur.
- 3.The Section Officer,
V.R.Section, High Court, Madras.



WEB COPY

C.SARAVANAN,J

jen



C.R.P.(PD).No.1451 of 2014

WEB COPY

29.03.2019