

**A.No.5388 of 2019**  
**in C.S.No.894 of 2005**

**N.SATHISH KUMAR.J.,**

This application has been filed to permit the applicants/plaintiffs to amend prayer (c) of the plaint in C.S.No.894 of 2005, and include the words "in accordance with the market value whichever is higher" after the words "this Hon'ble Court may fix".

2. The learned counsel appearing for the respondents/defendants contended that in para 18 of the plaint, the plaintiffs have restricted their claim for mesne profits at Rs.1,50,000/- but now, they are claiming higher market value and such amendment at this stage will affect the nature of the suit. Hence he prayed for dismissal of the application.

3. Heard the learned counsel for the applicants and the learned counsel appearing for the respondents and perused the materials.

4. Originally, the suit has been filed for recovery of possession of the suit property along with mesne profits. During the pendency of the proceedings, the possession has been vacated by the defendants. Now

only the reliefs (b) and (c) survive in the suit.

5. Initially, the applicants/plaintiffs filed C.S.No. 894 of 2005, seeking prayer (c) for the following relief:-

"C. directing the first defendant to pay future mesne profits of Rs. 1,50,000/- per month or at such other rate as this Court may fix from the date of plaint till the date of delivery of the vacant possession of the said property to the plaintiffs together with interest thereon at 18% per annum"

6. Now, what has been sought for by the applicants by way of the present application is to amend the prayer (c) to the following effect:-

C. directing the first defendant to pay future mesne profits of Rs. 1,50,000/- per month or at such other rate as this Court may fix **in accordance with market value whichever is higher** from the date of plaint till the date of delivery of the vacant possession of the said

property to the plaintiffs together with interest  
thereon at 18% per annum”

7. Though in para 18 the plaintiffs have restricted their claim for mesne profits to Rs.1,50,000/-, considering the facts and circumstances of the case, this Court is of the view that mere claiming the mesne profits at the rate of market value will not change the nature of the suit. Therefore, it is for the defendants to raise the plea of restricted mesne profits at the time of final arguments. Hence, the amendment as prayed for, is ordered and this application is allowed.

8. The learned counsel for the plaintiffs is directed to carry out the necessary amendment in the plaint and post the suit on 12.11.2019.

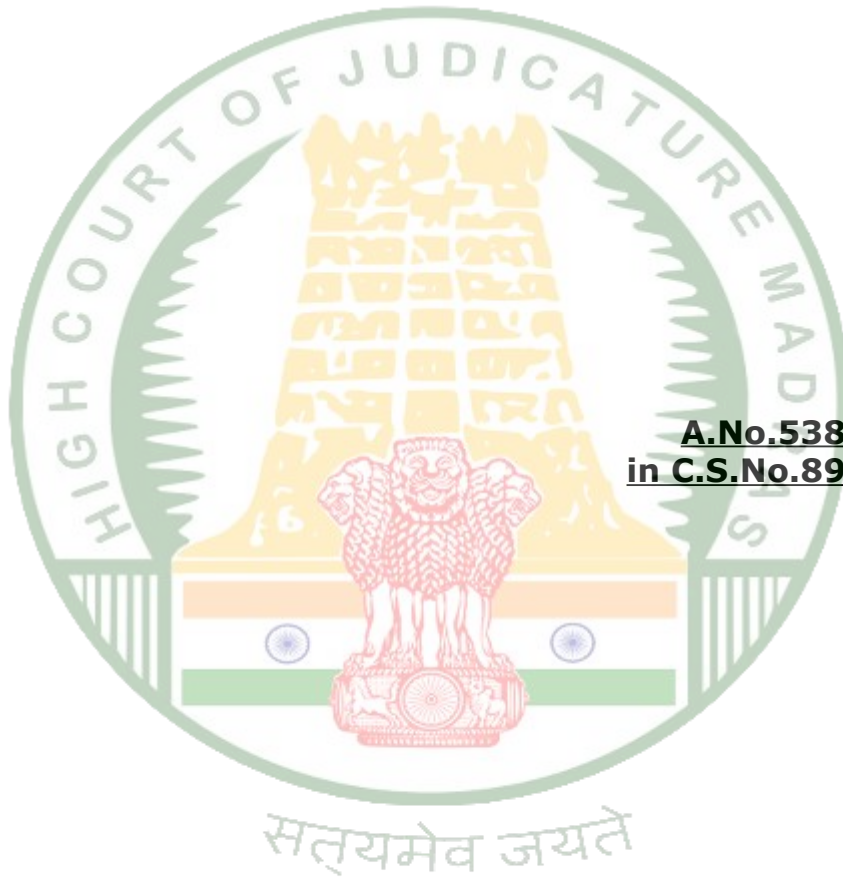
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