

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

CRP(PD).Nos. 1104 and 1106 of 2020

Latha

..Petitioner in both CRPs

Vs

1.B.Ramesh

2.The Managing Director,
Tamilnadu Slum Clearance Board,
Kamarajar Salai,
Chennai-600005.

3. The Commissioner
Corporation of Chennai
Chennai-600003.

.. Respondents in both CRPs

सत्यमेव जयते

Prayer in CRP.No.1104 of 2020: Civil Revision Petition is filed under Article 227 of Constitution of India against the order passed by the XV Assistant Judge, City Civil Court, Chennai in I.A.No. 3 of 2019 in O.S.No.5402 of 2016 dated 06.02.2020.

Prayer in CRP.No.1106 of 2020: Civil Revision Petition is filed under Article 227 of Constitution of India against the order passed by the XV Assistant Judge, City Civil Court, Chennai in I.A.No. 4 of 2019 in O.S.No.5402 of 2016 dated 06.02.2020

For Petitioner : Mr.M.Jaikumar
(in Both CRPs)

For Respondent :

COMMON ORDER

These Civil Revision Petitions are filed against the orders passed by the XV Assistant Judge, City Civil Court, Chennai in I.A.Nos. 3 & 4 of 2019 in O.S.No.5402 of 2016 dated 06.02.2020

2. Brief facts of the case is that the revision petitioner herein has filed a suit in O.S. No. 5402 of 2016 on the file of XV Assistant Judge, City Civil Court, Chennai for permanent injunction restraining the 1st defendant from interfering within the petitioner's peaceful usage of the common passage at the rear portion of the suit property. Subsequently, the 2nd and 3rd defendants/2nd & 3rd respondents herein were impleaded in the said Suit. At the time of evidence of PW1/plaintiff, the amendment plaint copy was not

in accordance to the original plaint i.e without the words “peaceful usage of the common passage at the rear portion”. Subsequently, the same was incorporated in the amended plaint copy, but the proof of affidavit of PW1 was filed without mentioning the words “common passage”. The petitioner has filed I.A.Nos. 3 & 4 of 2019 respectively. The said applications were dismissed by the Court below on the ground that the petitioner failed to take steps. Against which, the present Civil Revision Petitions are filed.

3. Heard the learned counsel appearing for the revision petitioner and perused the materials available on record.

4. The learned counsel for the petitioner submitted that the trial Court failed to note that the plaintiff can adduce evidence based on the pleadings in the plaint and it is pertinent to state that in the original plaint, it was mentioned as “Peaceful usage of the common passage at rear side” in the prayer column but at the time of filing amendment plaint copy, the above lines were missed. The trial Court without giving chance for adducing further evidence came to the conclusion that to rectify the defect in the

proof affidavit the petitioner had come with petitions and dismissed the petition.

5. On a perusal of records, it reveals that the revision petitioner/plaintiff filed the suit in O.S.No. 5402 of 2016 against the respondents herein for permanent injunction, restraining them from interfering within the plaintiff/revision petitioner's peaceful usage of the common passage at the rear portion of the suit schedule property. At the time of filing the amended plaint, the revision petitioner herein/plaintiff failed to incorporate the aforesaid lined "peaceful usage of the common passage at rear side" in the prayer portion. Subsequently, the petition filed by the petitioner to appoint the Advocate Commissioner to inspect the suit property was also dismissed on the ground that the prayer was not incorporated with the word "common passage". Subsequently, the revision petitioner/plaintiff again filed a petitioner to carry out the amendment in the Amended plaint, incorporating the original prayer and schedule of the plaint. That petition was allowed with the condition to carry out the amendment and fresh amended plaint copy to be filed on or before

03.10.2019. But on 30.10.2019 till 5.40 pm,, the revision petitioner/plaintiff has not filed Amended plaint copy and not carried out the amendment. Hence the said petition was dismissed for non compliance of the conditions. It is also seen that at the day of pronouncing judgment, the revision petitioner/plaintiff filed the petition in I.A. No. 4 of 2019 to reopen and recall the PW1 evidence.

6. The claim of the revision petitioner that, she adduced her evidence as PW1 without correcting the prayer in the amended plaint copy and filed her proof of affidavit of PW1 with insufficient prayer without mentioning the words 'common passage' and to rectify the defect the revision petitioner wants to reopen and recall the PW1 evidence and filed the above applications in I.A. No. 3 of 2019 and I.A. No. 4 of 2019 respectively. But the revision petitioner/plaintiff has not taken any steps to correct the prayer in the amended plaint. Therefore, without taking steps to correct the amended plaint copy, the revision petitioner/plaintiff is not entitled for adduce the evidence based on the aforesaid amended plaint. The trial Court has rightly observed the aforesaid facts and dismissed the applications filed

by the revision petitioner. Therefore, this Court finds no grounds to interfere with the order dated 06.02.2020 passed by the trial Court.

7. In the result, these Civil Revision Petitions are dismissed. No costs.

Consequently, connected Miscellaneous Petition if any, are closed.

12.03.2020

Index : Yes/No
Internet : yes
ak

To
The XV Assistant Judge,
City Civil Court,
Chennai.

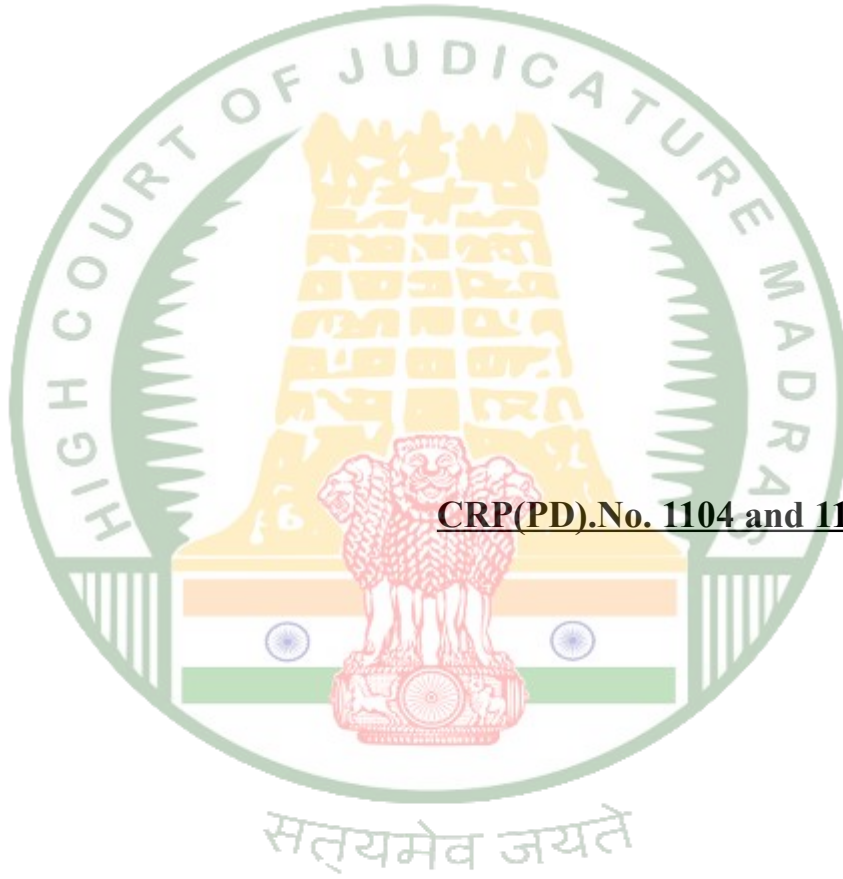


WEB COPY

CRP(PD).No. 1104 and 1106 of 2020

D. KRISHNAKUMAR, J

ak



CRP(PD).No. 1104 and 1106 of 2020

WEB COPY

12.03.2020