

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.4050 of 2018 and
CMP No.22375 of 2018

E.A.Vishnupathy

... Petitioner

Vs

Dr.K.Mangayarkkarasi

... Respondent

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, 1905, to set aside the fair and decretal order dated 06.10.2018 passed in I.A.No.3185 of 2018 in O.S.No.4570 of 2016 on the file of the VII Assistant Judge (FAC), IV Assistant Court, City Civil Court, Chennai by allowing this Civil Revision Petition.

For Petitioner : Mr.W.M.Abdul Majeed

For Respondent : Mr.M.Sriram

O R D E R

The defendant in O.S.No.4570 of 2016 on the file of the IV Assistant City Civil Court, Chennai has come out with this revision against in order allowing in application in I.A.No.3184 of 2018 seeking leave to amend the plaint.

2. The suit was originally filed for relief of permanent injunction restraining the defendant from putting up any construction in the common passage described as Schedule 'B' in the plaint, mandatory injunction to remove the platform described as Schedule 'C'. There is an order of Status- quo pending suit. A commissioner was appointed. After the commissioner filed a report, the plaintiff came up with the application for amendment claiming that the defendant had put up further constructions in the path way during the pendency of the suit and sought to include the prayer for mandatory injunction to remove the said constructions also.

3. This was resisted by the defendant contending that the

construction was put up even before the filing of the suit and therefore the application for amendment is ill conceived. The Trial Court rejected the defence and allowed the application for amendment. Heard Mr.W.M.Abdul Majeed, learned counsel appearing for the petitioner and Mr.M.Sriram, learned counsel appearing for the respondent.

4. Mr.W.M.Abdul Majeed, learned counsel appearing for the petitioner would vehemently contend that the Trial Court has not right in allowing the amendment when he has taken a specific defence that the construction had been put up prior to suit itself, the Trial Court has not concluded on the date of the construction. It has only said that whether the construction was put up prior to the suit or after the suit and during the currency of the order granting Status - quo will have to be decided only upon evidence being let in and the amendment per se will not cause any hardship or prejudice to the defendant. The plaintiff has come to Court with a specific case that the constructions were put up pending suit. Therefore, it is for the plaintiff to show that the suit is within 3years from the date of the

alleged illegal construction over the property.

5. The defence is that the constructions were put up earlier and therefore the claim is barred by limitation. It is open to the defendant to establish his claim. Mere allowing of the amendment application will not amount to a decree being passed in the suit. I, therefore, see no illegality and irregularity in the order of the Trial Court. The order of the Trial Court is, therefore, confirmed. The Civil Revision Petition is dismissed. It is made clear that the defendant will have a liberty to file an additional written statement and contest the suit on all grounds available to him. Consequently, connected Miscellaneous Petition is closed.

12.10.2020

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Index: Yes/No

Speaking order / Non speaking order

To

The IV Assistant Judge, City Civil Court, Chennai

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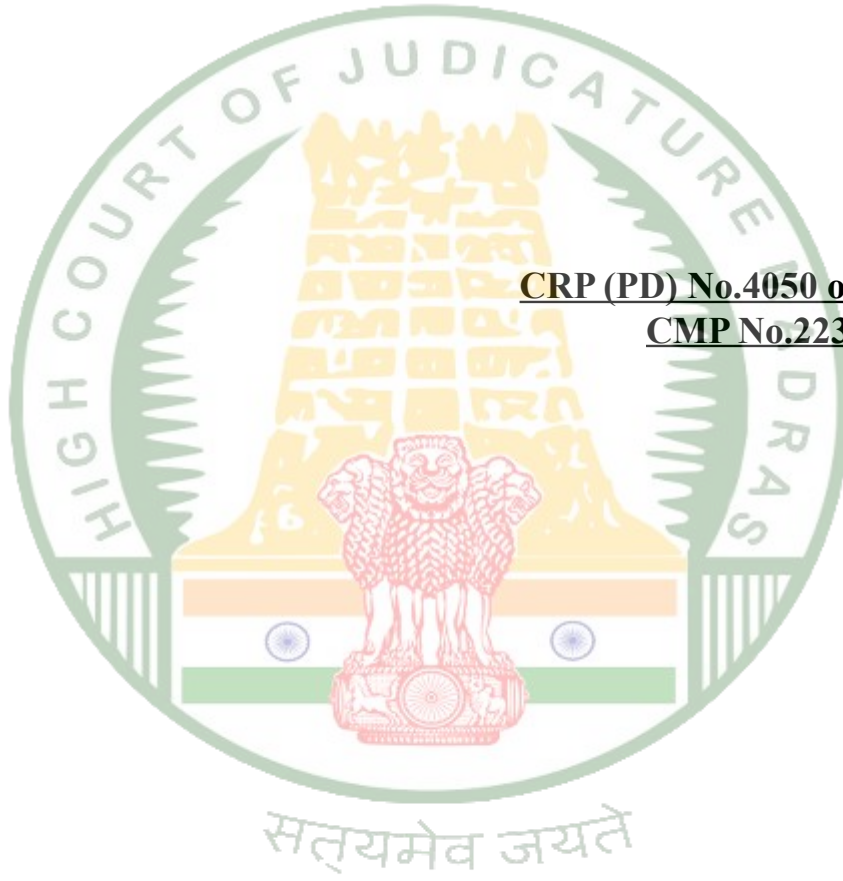


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R.SUBRAMANIAN, J.

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