

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.1614 of 2015
and M.P.No.1 of 2015

1.Gopalsamy (died)
2.Nagalakshmi
3.Sujatha
4.Deepa

...Petitioners

Vs

Ramachandran

...Respondent

(Petitioners 2 to 4 brought on record as LR's of the deceased sole petitioner, viz., Gopalsamy, vide Court order dated 19.02.2020 made in C.M.P.Nos.13961, 13964 and 13967 of 2019 in C.R.P.No.1614 of 2015)

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and decreetal order dated 02.02.2015 made in I.A.No.789 of 2014 in O.S.No.166 of 2013 on the file of the District Munsif's Court, Nagapattinam.

For Petitioners : Mr.T.Sezhian

For Respondent : Mr.J.Jawahar

ORDER

This Petition has been filed to set aside the fair and decreetal order dated 02.02.2015 made in I.A.No.789 of 2014 in O.S.No.166 of 2013 on the file of the District Munsif's Court, Nagapattinam, thereby dismissing the petition for amendment.

2.The 1st petitioner is the plaintiff and he filed the suit for permanent injunction as against the respondent herein. The cause of action for filing the suit is that the respondent encroached the suit property and started construction. The 1st petitioner failed to obtain any interim injunction as against the respondent and utilizing such circumstance, the respondent proceeded with construction in the encroached area and completed the same. Therefore, the petitioner filed a petition for appointment of Advocate Commissioner to inspect the suit property, with the help of the Surveyor to measure the same.

3.According to the Commissioner's report, the respondent encroached a portion of land belongs to the petitioners herein in Survey No.188/17. After receipt of the Commissioner's report the petitioner filed a petition to amend the prayer in I.A.No.789 of 2014 in O.S.No.166 of 2013

by deleting the prayer of interim injunction and include the prayer of declaration in respect of the suit property. The Court below dismissed the petition on 02.02.2015, for the reason that the petitioner never stated in the plaint that when the respondent encroached the suit property and also on the ground that the present prayer which he sought in the amendment petition will introduce a new cause of action and totally different case with inconsistent prayer.

4. On perusal of records would reveal that the petitioner categorically stated that the respondent encroached 2 feet in the suit property and started construction of compound wall. Further pleaded that the sun shade also encroached in the suit property put up by the respondent herein. That apart on perusal of the Commissioner's report would reveal that a portion of the suit property has been encroached by the respondent and completed construction. Therefore, the petitioner necessarily ought to have filed the petition to include the prayer of recovery of possession and mandatory injunction to demolish the portion which was constructed by the respondent herein. Further, it would also avoid multiplicity of further litigation between the parties. As discussed above, the findings of the Court

below in I.A.No.789 of 2014 in O.S.No.166 of 2013 on the file of the District Munsif's Court, Nagapattinam, dated 02.02.2015 is perverse and liable to be set aside.

5.Accordingly, the order dated 02.02.2015 made in I.A.No.789 of 2014 in O.S.No.166 of 2013 on the file of the District Munsif's Court, Nagapattinam, is set aside and the Civil Revision Petition is allowed. Further, it is made clear that the petitioner has filed the suit and paid the Court fees. No costs. Consequently connected miscellaneous petition is closed.

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18.01.2021

Index:Yes/No

Internet: Yes/No

Speaking Order: Yes/No

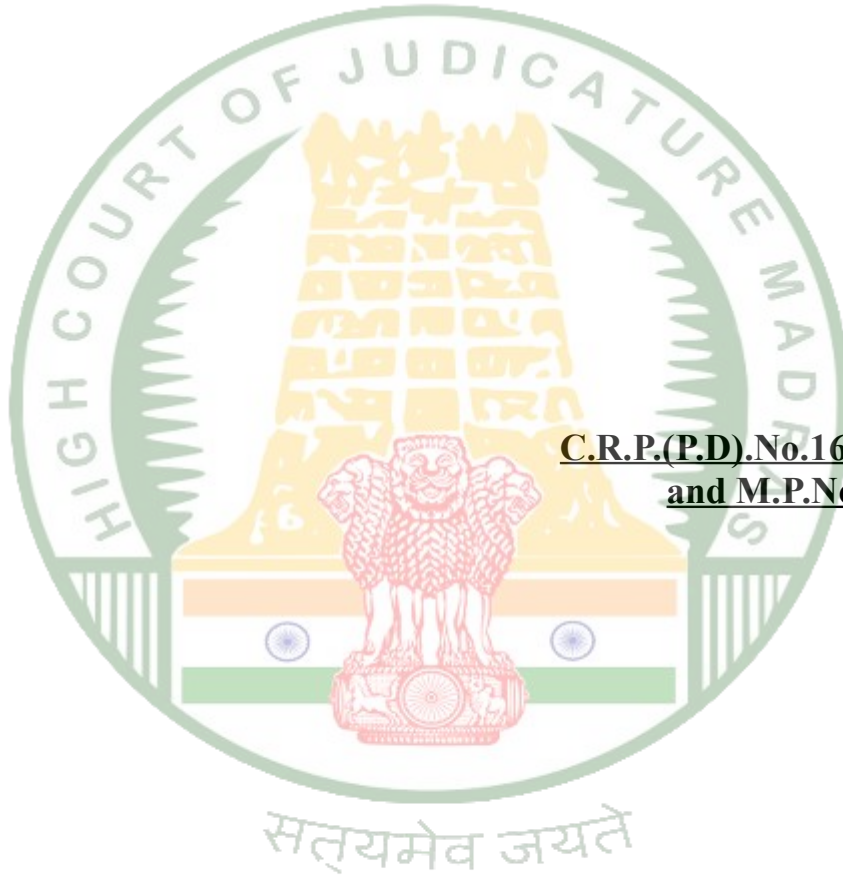
To

The District Munsif's Court, Nagapattinam.

C.R.P.(P.D).No.1614 of 2015

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