

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.1885 of 2015

and

MP.No.1 of 2015

Muthupandi

..Petitioner

Vs.

1.M.Perumal(died)

2.P.Valli

3.P.Kannan

4.P.Ramesh Balaji

(RR2 to 4 brought on record as LR's of the deceased sole respondent vide M.Perumal vide court order dated 15.02.2021 made in CMP.No.177, 181 and 184 of 2021 in CRP.PD.No.1885 of 2015)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair order and decree passed in IA.No.12433 of 2014 in OS.No.2178 of 2014 dated 04.03.2015 on the file of the XVIII Assistant City Civil Court at Chennai.

For Petitioner

: Dr.A.Thiyagarajan,
Senior Counsel
for Mr.M.Sunil Kumar

For Respondents

R1 : died(steps taken)

For R2 to 4 : M/s.E.Meenakshi

ORDER

This civil revision petition is arising out of fair order and decree passed in IA.No.12433 of 2014 in OS.No.2178 of 2014 dated 04.03.2015 on the file of the XVIII Assistant City Civil Court at Chennai thereby allowing the petition for amendment to include the prayer of mandatory injunction and recovery of possession.

2. The petitioner is the defendant and the first respondent is the plaintiff. The first respondent originally filed suit for declaration and permanent injunction in respect of the suit property. In the suit, the respondent averred that the petitioner who purchased the house plot at No.65 and while putting up new construction, he encroached the respondent's land on the western side north to south admeasuring 27 meters length and two meters breadth from east to west and also the petitioner has attempted gaining pathway and the construction materials of the plaintiff causing disturbance to the peaceful possession and enjoyment of the suit schedule property by the respondent herein. While

pending the suit, the respondent filed petition including the prayer of mandatory injunction and recovery of possession. In the affidavit filed in support of the amendment petition revealed that during the pendency of the suit and in the month of June 2013 and subsequent periods, the petitioner trespassed into his property and constructed house in the open area. When the subject of the suit property was ceased before trial court, the petitioner without obeying the court proceedings and constructed in his property.

3.The learned Senior Counsel appearing for the petitioner submitted that the respondent categorically averred that the suit property admeasuring 75.53 sq.meters comprised in survey No.TS. 1/57, Block No.9 situated at Dhayalu Nagar, Phase-I. While it being so, the respondent again claimed more extent including the extent purchased by the petitioner herein. The petitioner purchased from his vendor namely one, Bavani, adjacent house site No.65 admeasuring 101.52 sq.ft. Whereas the respondent contended that Slum Clearance Board allotted equal extent of house plot to all including the vendor of the petitioner herein. Therefore, it should not be more than 75.53 sq.meters.

4. The court below stated that no prejudice would be caused to the petitioner, if the amendments were allowed and it would avoid multiplicity of proceedings. In fact the change in nature of the relief claim shall not be considered as change in the nature of the suit.

5. Therefore, this Court finds no irregularity or infirmity in the order passed by the court below. Accordingly, this civil revision petition is dismissed. It is made clear that the respondent cannot claim the suit property more than the extent of 75.53 sq.meters comprised in survey No.TS. 1/57, Block No.9 situated at Dhayalu Nagar, Phase-I. Consequently, connected miscellaneous petition is closed. No order as to costs.

25.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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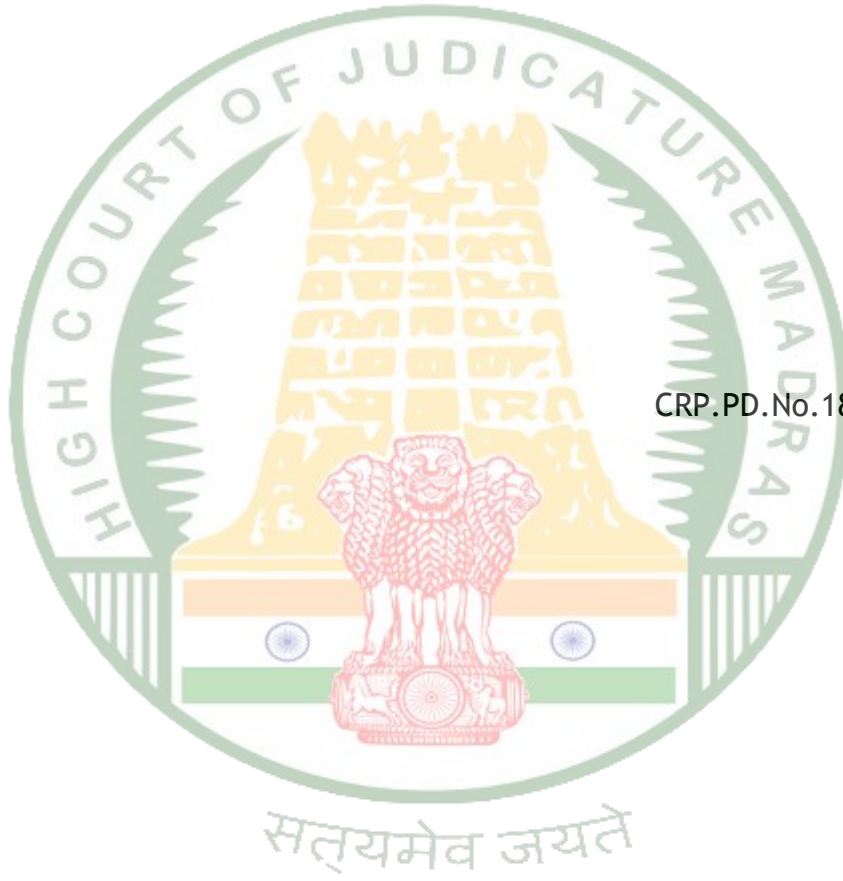
The learned XVIII Assistant City Civil Court
at Chennai.



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G.K.ILANTHIRAIYAN,J.

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