

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM

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

CRP.PD.No.1662 of 2018 and
CMP.No.9086 of 2018

Krishnan

..Petitioner

Vs.

1.Munian
2.Ealakanni
3.Shanmugham

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order dated 21.02.2018 passed by the learned District Munsif, Madurantakkam, Kancheepuram District dismissing in IA.No.2501 of 2017 in OS.No.174 of 2012.

For Petitioner : Mr.N.Nagu Sah

For Respondents : Mr.Yokesh
for Mr.V.G.Suresh Kumar

ORDER

This Civil Revision Petition is filed against the order and decretal order dated 21.02.2018 passed by the learned District

Munsif, Madurantakkam, Kancheepuram District in IA.No.2501 of 2017 in OS.No.174 of 2012, thereby dismissing the petition to implead the third respondent herein as proposed defendant.

2. The petitioner is the plaintiff and the respondents 1 and 2 are the defendants. The petitioner filed suit for bare injunction and also mandatory injunction to remove the construction put up in the suit property by the respondents 1 and 2. After receipt of summons, the second respondent filed written statement stating that the property which was originally owned by the first respondent and it was purchased by her husband by the registered sale deed dated 01.06.2010. Admittedly, after purchase of the suit property, they put up construction and they are in possession and enjoyment of the same. Since the property stands in the name of the second respondent's husband, the petitioner filed petition to implead her husband as third defendant in the suit under Order 1 Rule 10 of CPC. The respondents filed counter stating that as if the petition filed by the petitioner under Order 6 Rule 17 of CPC for amendment, they objected the same. The court below wrongly construed the petition as if filed under Order 6 Rule 17 of CPC and dismissed the same on the ground that after commencement of trial, the petition for amendment is not permissible. On perusal of the record, the petitioner filed

petition under Order 1 rule 10 of CPC to implead the third respondent herein as proposed third defendant in the suit for the reason that the property which was purchased by the husband of the second respondent from the first respondent.

3. The learned counsel for the respondents would submit that the suit is filed for mandatory injunction to remove some construction put up by the respondents. According to the second respondent, the property was purchased in the year 2010 by her husband and immediately after purchase, they put up construction and they are in possession and enjoyment of the suit property. Though, the petitioner filed suit in time i.e. within a period of three years, the petitioner failed to file petition to implead the third respondent within a period of three years. In fact, the second respondent filed written statement immediately in the year 2012 itself. Therefore, the petitioner ought to have filed petition to implead the third respondent within a period of three years. Therefore, the suit itself is clearly barred by limitation and the court below rightly dismissed the petition to implead the third respondent as proposed defendant.

4. Admittedly, the present petition is filed only to

implead the third respondent as proposed third defendant in the suit. Therefore, the third respondent can very well file written statement raising limitation issue. It can be considered only during the trial. Only on the ground of limitation, it cannot be dismissed.

5. Accordingly, this civil revision petition is allowed and the order dated 21.02.2018 passed by the learned District Munsif, Madurantakkam, Kancheepuram District in IA.No.2501 of 2017 in OS.No.174 of 2012 is set aside. The third respondent is impleaded as third defendant in the suit and the third defendant is at liberty to file his written statement. Consequently, connected miscellaneous petition is closed. No order as to costs.

23.04.2021

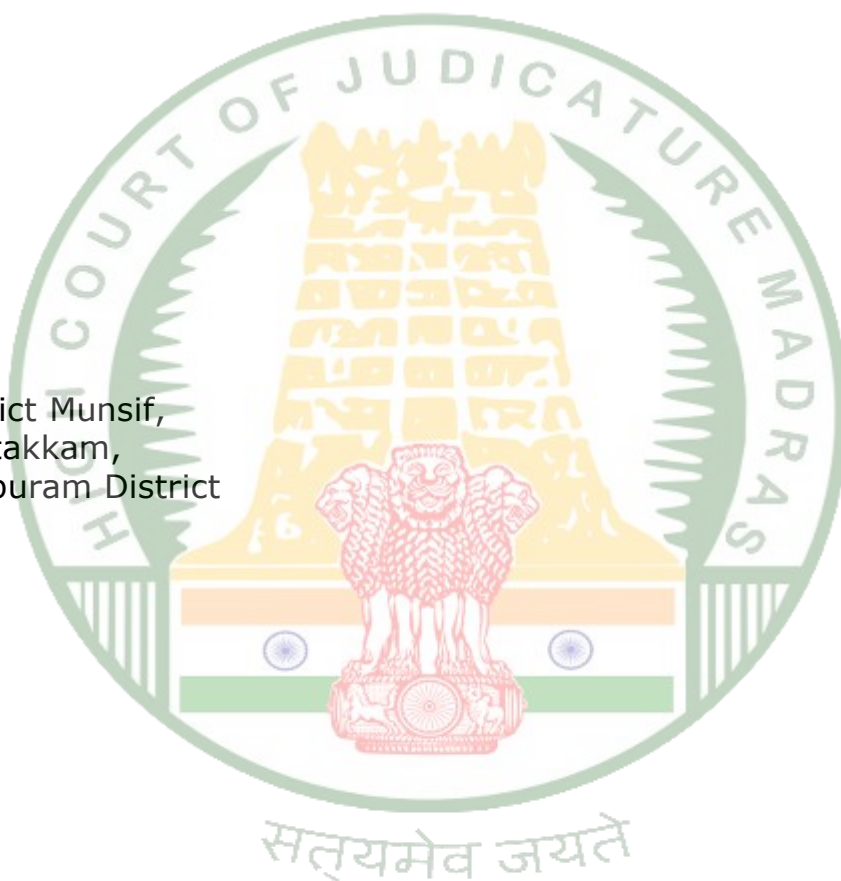
Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok

सत्यमेव जयते

WEB COPY

To

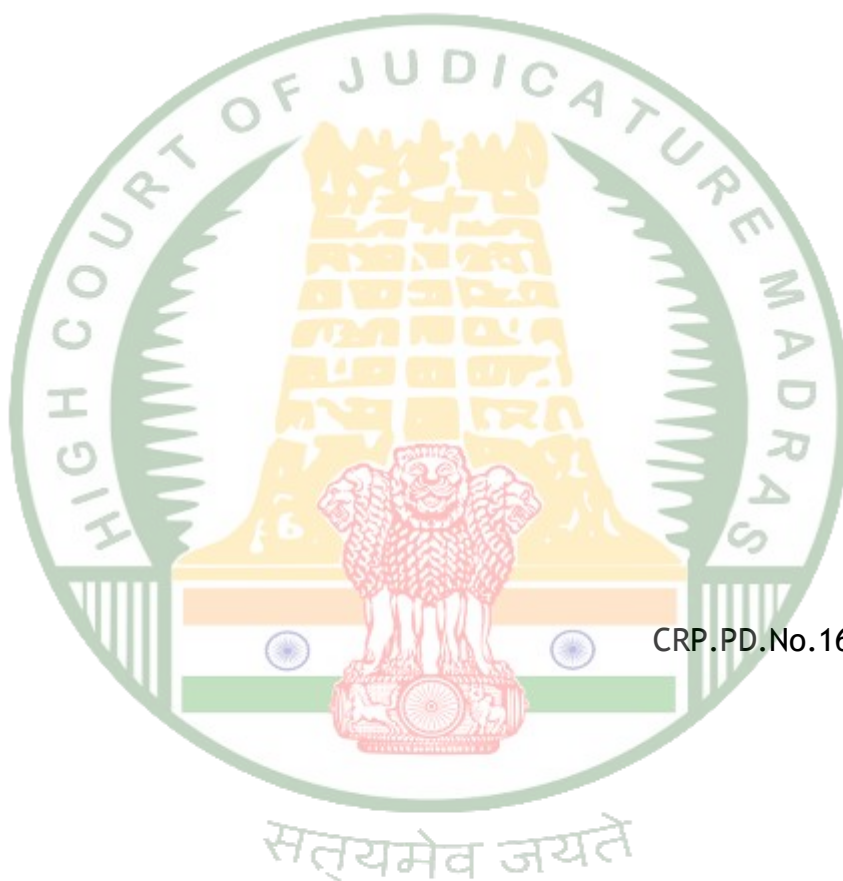
The District Munsif,
Madurantakkam,
Kancheepuram District



WEB COPY

G.K.ILANTHIRAIYAN,J.

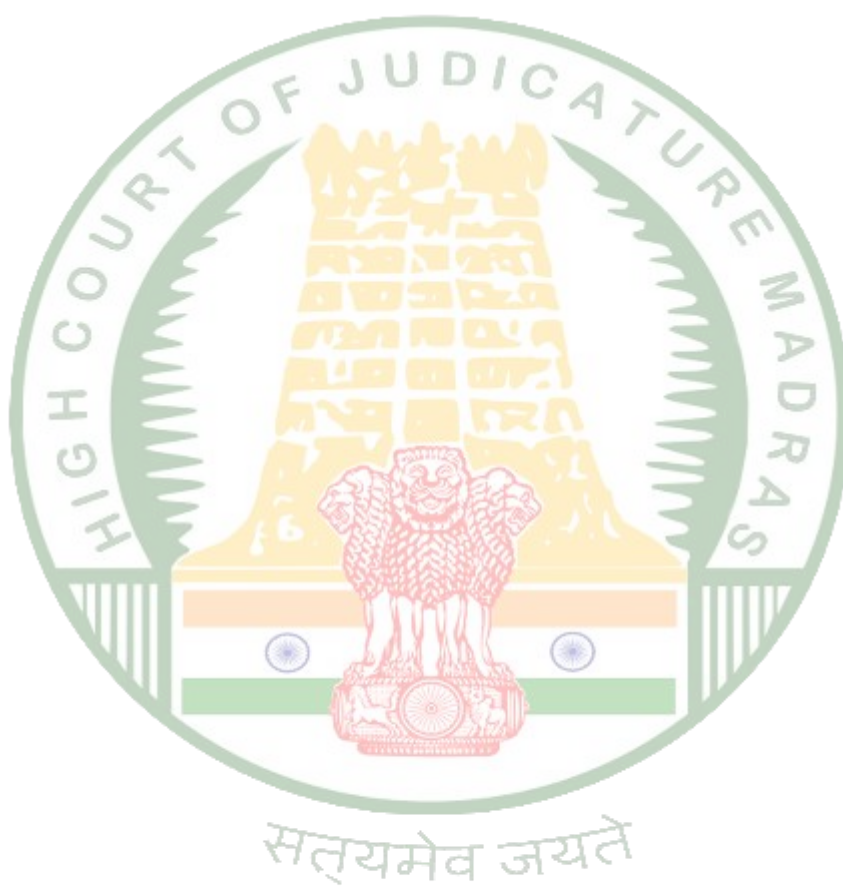
lok



CRP.PD.No.1662 of 2018

WEB COPY

23.04.2021



WEB COPY