

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03..2021

CORAM :

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD).No.2630 of 2018
and CMP.No.15761 of 2018

Varadarajan

... Petitioner

Versus

1.Mrs.K.Geetha

2.M/s.The Executive Engineer,
Mogappair Zone, TNHB,
Chennai – 600 101.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of Indian, to call for the records of the Impugned Order dated 18.06.2018 in I.A.No.375 of 2018 in O.S.No.143 of 2010 on the file of the Rent Controller Cum District Munsif Court at Ambattur and set aside the same and to pass any such further orders as it may deem may fit and proper in the interest of justice.

For Petitioner : Mr.B.Deepak Narayanan

For Respondents : Mr.Arulmozhi for R1
No appearance for R2

* * * *

ORDER

This Civil Revision Petition is filed to call for the records of the Impugned Order dated 18.06.2018 in I.A.No.375 of 2018 in O.S.No.143 of 2010 on the file of the Rent Controller Cum District Munsif Court at Ambattur and set aside the same.

2.I.A.No.375 of 2018 was filed by the 1st respondent/plaintiff for amendment of the plaint.

3.The learned counsel for the petitioner/2nd defendant submitted that originally the 1st respondent mentioned in the plaint that the petitioner herein is in the possession of the suit schedule property to the extent of 1 meter. The Advocate Commissioner was appointed by the Court below to measure the suit schedule property and he filed the report in the year 2010 stating that the petitioner is in possession of 0.3 meter in the suit schedule property. The 1st respondent has also filed an objection for the said report. Under such circumstance, after the period of 8 years, in the year 2018, the 1st respondent filed the application to amend the plaint with regard to the possession of the petitioner in the suit schedule property, as if that the petitioner is in the possession of 0.3 meter in the suit schedule property based on the Advocate

Commissioner's report. The 1st respondent has completely changed his original stand that the petitioner is in possession of 1 meter after filing the objection to the Advocate Commissioner's report. Now, the main contention of the petitioner is that when the respondent made an objection to the Advocate Commissioner's report with regard to the possession of the petitioner to the extent of 0.3 meter, the 1st respondent is not entitle to file the application for amendment based on the Advocate Commissioner's report. Therefore, he prayed to set aside the order passed by the Court below.

4.Per Contra, the learned counsel for the 1st respondent submitted that the original stand of the 1st respondent was that the petitioner is in illegal possession of 1 meter in the respondent's property. Now, the respondent filed an application for amending the said 1 meter as 0.3 meter as stated in the Advocate commissioner report filed in the year 2010. Further, the learned counsel admitted the fact that the application for amendment has been filed after the period of 8 years from the filing of Advocate Commissioner's report and he has also made objection to the said Advocate Commissioner's report. Now, the 1st respondent has come to the know that the petitioner is in the possession of the respondent's property to the extent of 0.30 meter. Therefore, he filed the application for amendment. The Court considered the same and in

the interest of the justice, it has allowed the application.

5.Heard the learned counsel for the petitioner as well as the respondent and perused the materials.

6.The 1st respondent herein filed the petition under Order 6 Rule 17 r/w 151 C.P.C to amend the suit schedule property. Originally, the suit was filed stating that the petitioner is in the illegal possession of respondent property to the extent of 1 meter. Subsequently, the Advocate Commissioner was appointed and he filed the report in the year 2010 stating that 12 meter length and 0.30 meter width of the land belonging to the plaintiff encroached by the 2nd defendant. Though, initially the 1st respondent herein filed the objection to the said Commissioner's report, subsequently, he realised that the petitioner is in the possession of 0.30 meter alone. Therefore, he filed the application for amendment. The Court below taking into consideration all these aspect in order to meet the ends of justice and to prevent the miscarriage of justice, has allowed the amend the petition.

7.The 1st respondent herein filed the application to amend the alleged encroachment of 1 meter width as 0.3 meter width and by virtue of the said

amendment he wants to reduce the alleged encroachment stated while filing the plaint i.e 1 meter width to 12 meter length as 0.3 meter width to 12 meter length. In order to meet the ends of justice and to prevent the miscarriage of justice the amendment needs to be allowed. Therefore, this Court does not find any illegality in the order passed by the Court below. In view of the above, the Civil Revision Petition deserves to be dismissed. The Court below is directed to dispose of the suit within a period of six months, from the date of receipt of a copy of this order, since the matter is pending from the year 2010.

8. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

04.03.2021

Index: Yes/No

Internet: Yes/No

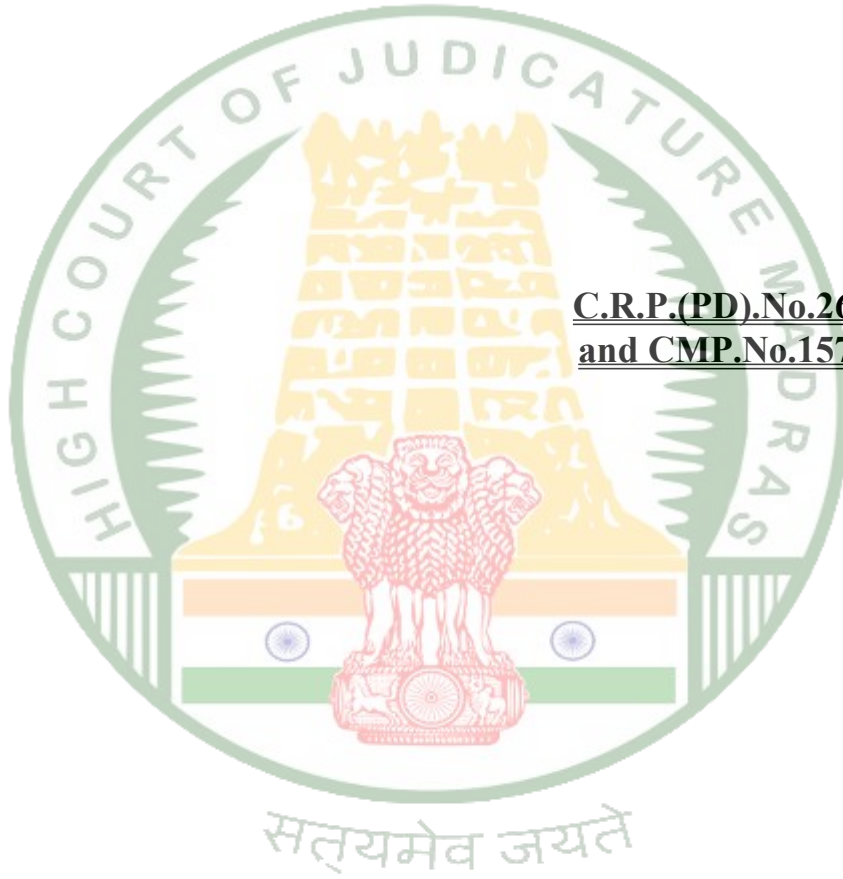
Speaking Order/Non Speaking Order
ah/rst

To

The Rent Controller Cum District Munsif Court at Ambattur.

WEB COPY

KRISHNAN RAMASAMY, J.,
ah/rst



C.R.P.(PD).No.2630 of 2018
and CMP.No.15761 of 2018

04.03.2021

WEB COPY