

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM

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

CRP.PD.No.752 of 2018 and  
CMP.No.3815 of 2018

Gowri

..Petitioner

Vs.

1.Gurusamy  
2.Azhagulakshmi  
3.R.Sudhakar  
4.The Chairman,  
Tamil Nadu Slum Clearance Board,  
No.5, Kamarajar Road,  
Chennai – 600 005

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the impugned fair and decretal order dated 31.01.2018 passed in IA.No.12529 of 2017 in OS.No.11595 of 2010 on the file of the XI Assistant City Civil Court at Chennai and permit the petitioner to amend the plaint in OS.No.11595 of 2010 on the file of the XI Assistant City Civil Court at Chennai.

For Petitioner : Mr.V.M.Venkatramana

For Respondents  
For R1 & 2 : Mr.S.Udhayakumar

R3 & 4 : No appearance

### ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 31.01.2018 passed in IA.No.12529 of 2017 in OS.No.11595 of 2010 on the file of the XI Assistant City Civil Court at Chennai, thereby dismissing the petition to amend the plaint.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed suit for declaration and permanent injunction in respect of the suit property. While pending the suit, the respondents 1 and 2 also filed suit for permanent injunction in respect of the plot Nos.449 and 450 situated at Tharamani - Periyar Nagar Phase-I, Chennai. Whereas the petitioner filed suit in respect of plot No.451, Chola Mannan Street, Periyar Nagar Phase-I, Tharamani, Chennai. While pending the suit, the respondents 1 and 2 encroached some portion of the property and as such the petitioner filed petition seeking appointment of advocate commissioner. The advocate commissioner filed his final report on 30.03.2016.

3. According to the advocate commissioner, the eastern side of plot No.451 has been encroached. Plot No.451 lies in between Cholamman Street on the eastern side, plot No.454 on the western side, plot Nos.452 and 453, on the southern side, plot Nos.449 & 450 on the northern side. On the plot No.451, the superstructure on the northern side of plot nos.452 and 453 and eastern side of plot No.454 could be found as plot Nos.449 and 450. The plot No.451 could not be seen. Therefore, the petitioner was constrained to file the petition to amend the prayer of mandatory injunction directing the respondents to remove the unauthorised, illegal construction erected upon the suit schedule property. It was dismissed for the reason that the trial commenced and issues are settled. Admittedly, while pending the suit, the first and second respondents had put up construction as per the commissioner's report. The final report was filed by the commissioner on 30.03.2016. Therefore, the cause of action to include the prayer of mandatory injunction arises only after putting up construction by the respondents 1 and 2 after filing the report by the advocate commissioner.

4. In view of the above, this civil revision petition is allowed and the order dated 31.01.2018 passed in IA.No.12529 of 2017 in OS.No.11595 of 2010 on the file of the XI Assistant City Civil Court at

Chennai is set aside. After carrying out the amendment, the court below is directed to conduct joint trial in both the suits in OS.Nos.11595 of 2010 and 11660 of 2010 on the file of the XI Assistant City Civil Court at Chennai and dispose of the same within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

29.07.2021

Speaking/Non-speaking order  
Index : Yes/No  
Internet : Yes/No  
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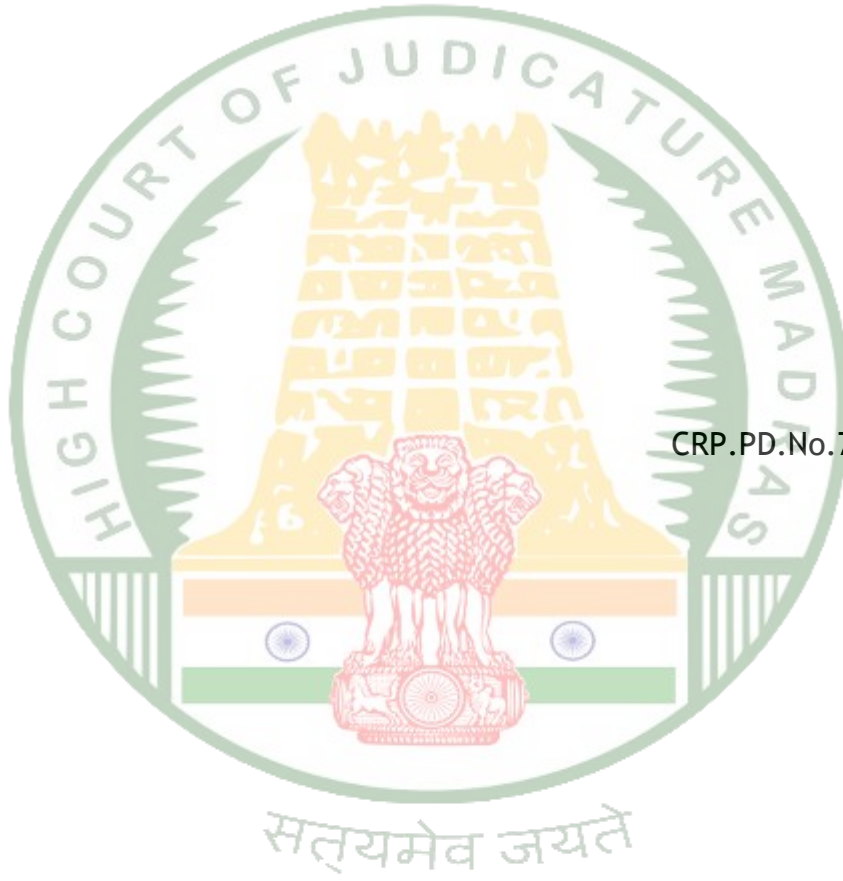
The XI Assistant Judge,  
City Civil Court at Chennai



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**G.K.ILANTHIRAIYAN,J.**

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