

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

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

**C.R.P.(PD) No.296 of 2017
and C.M.P.No.1371 of 2017**

D.Raju

... Petitioner

Vs.

D.Ravi

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order and decreetal order dated 24.11.2016 made in I.A.No.11723 of 2016 in O.S.No.1940 of 2016 on the file of the XI Assistant City Civil Court at Chennai.

For Petitioner : Mr.P.Chandrasekar

For Respondent : Mr.Elumalai
for M/s.Arulselvam Associates

ORDER

This Civil Revision Petition has been filed to set aside the order and decreetal order dated 24.11.2016 made in I.A.No.11723 of 2016 in

O.S.No.1940 of 2016 on the file of the XI Assistant Judge, City Civil Court at Chennai, thereby dismissing the petition filed by the petitioner for rejection of plaint.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for bare injunction in respect of the suit property restraining the petitioner to construct the superstructure in the suit schedule property. Pending suit, the petitioner filed a petition for rejection of the plaint on various grounds.

3. A perusal of the affidavit filed in support of the rejection of plaint reveals that the suit property was allotted in favour of his elder brother one Kannan by the Tamil Nadu Slum Clearance Board. The petitioner and the respondent are brothers. Thereafter, the respondent filed a Writ Petition before this Court in W.P.No.9473 of 2016 for injunction restraining the petitioner not to put up any construction in which, this Court dismissed the Writ Petition with the following observations :-

“3.The dispute involved herein is purely private in nature, as the petitioner, claiming to be co-sharer of the concerned land, submits that the fourth respondent, his elder brother, has started construction of a building without earmarking his share in the land in question.

4. In such view of the matter, this writ petition is not maintainable. However, liberty is reserved to the petitioner to work out his remedy in the manner known to law.”

4. This Court while dismissing the Writ Petition has granted liberty to the petitioner to work out his remedy in the manner known to law, in respect of the suit property between the brothers. However, the respondent filed a suit for injunction not to put up any construction by the petitioner herein. Therefore, there are triable issues before the Trial Court by letting in evidence. It is also seen that already plaintiff side evidence was over and the matter is posted for cross-examination of P.W.1.

5. In view of the above, this Court finds no illegality or infirmity in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. The Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

05.03.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To

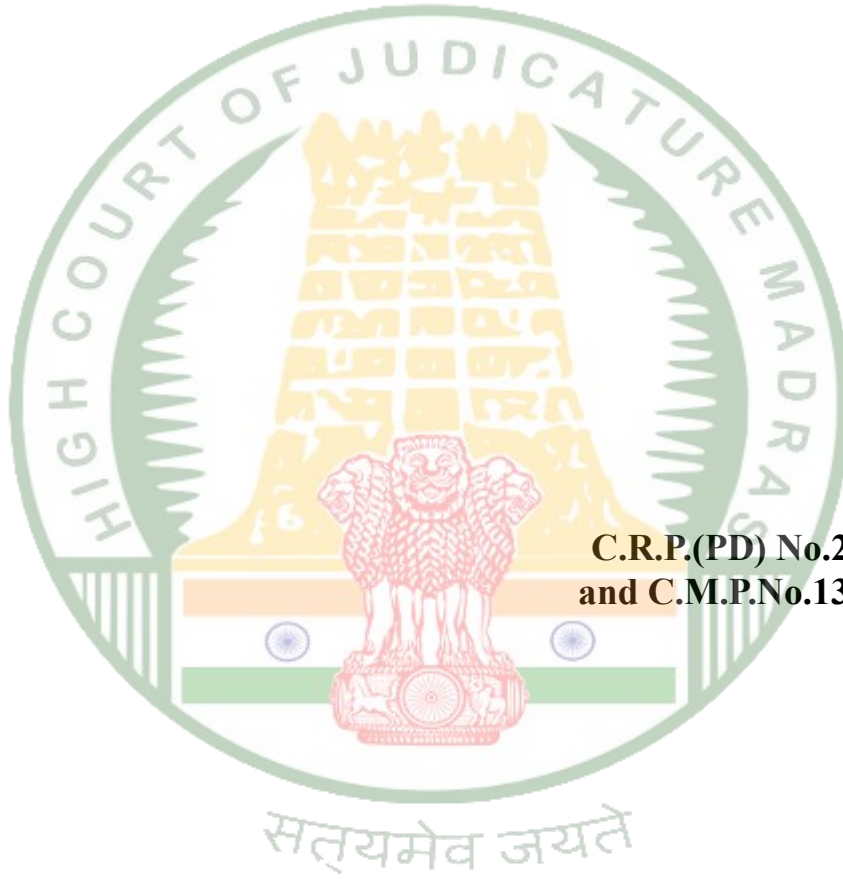
The XI Assistant Judge,
City Civil Court, Chennai.

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C.R.P.(P.D).No.296 of 2017
and C.M.P.No.1371 of 2017

G.K.ILANTHIRAIYAN.J,

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