

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.375 of 2017
and C.M.P.No.1654 of 2017

A.Ahammed Moideen @ Babu ... Petitioner

Vs.

1.Manjula

2.K.Chandrasekar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 03.11.2016 made in I.A.No.603 of 2016 in O.S.No.172 of 2016 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Mettupalayam.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.T.Karunakaran

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 03.11.2016 made in I.A.No.603 of 2016 in O.S.No.172 of 2016 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Mettupalayam.

2.Heard the learned counsel appearing for the petitioner through Video Conferencing/Hybrid Mode and the learned counsel for the respondents, who is appearing before this Court physically and perused the entire materials on record.

3.The petitioner is defendant and respondents are the plaintiffs in O.S.No.172 of 2016 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Mettupalayam. The respondents filed the said suit for mandatory injunction and permanent injunction. The petitioner filed

I.A.No.603 of 2016 under Order VII Rule 11 of C.P.C., to reject the plaint.

4. According to the petitioner, by seeking relief of mandatory injunction, the respondents are seeking possession of 75 sq.ft. of land. The value of 75 sq.ft. is Rs.1,50,000/-. The respondents have not paid correct Court fee. In view of the same, the Court has no pecuniary jurisdiction. The respondents have constructed the building contrary to the approved plan without leaving any side setback. The respondents have also suppressed the settlement arrived between the vendors of the petitioner and respondents. The respondents have not approached the Court with clean hands. They have suppressed the consent deed dated 22.12.2008. The plaint does not disclose cause of action and prayed for rejection of the plaint.

5. The respondents filed counter affidavit and denied various averments made in the affidavit filed in support of the above I.A. and

contended that the respondents are seeking only mandatory injunction for removal of encroachment made by the petitioner. They have not filed suit for possession of 75 sq.ft. of land. The respondents have paid Court fee for the relief sought for in the present suit. The value given by the petitioner is whimsical. The plaint has to be taken as such and it cannot be as claimed by the defendant/petitioner. The reason given by the petitioner for rejection of plaint is not contemplated under the provisions of Order VII Rule 11 of C.P.C. and prayed for dismissal of the said I.A.

6.The learned Judge considering the averments in the plaint, documents filed by the respondents, affidavit, counter affidavit in I.A.No.603 of 2016 and the judgments relied on by the respondents, dismissed the I.A.

7.Against the said fair and decretal order dated 03.11.2016 made in I.A.No.603 of 2016 in O.S.No.172 of 2016, the petitioner has come out with the present Civil Revision Petition.

8.From the materials on record, it is seen that the petitioner is seeking rejection of plaint on the ground that the respondents are seeking possession of 75 sq.ft. of land in the guise of mandatory injunction. As the respondents are indirectly seeking possession of 75 sq.ft. from the petitioner, they have to pay the Court fee for the market value of the said 75 sq.ft. The value of the said 75 sq.ft. is Rs.1,50,000/- and hence, the Court has no pecuniary jurisdiction.

9.It is well settled that while considering the application under Order VII Rule 11 of C.P.C., only the averments made in the plaint and documents along with plaint are relevant. The averments in the written statement, affidavit filed in support of the application filed to reject the plaint and documents filed cannot be considered for rejection of plaint. The plaint has to be read as a whole and averments made therein has to be taken as correct. A reading of the plaint in the present case shows that the respondents alleged that the petitioner has encroached the respondents' property and put up a compound wall. The respondents have

sought for mandatory injunction for removal of said compound wall. No where in the plaint it is stated that the respondents have sought for possession of 75 sq.ft. of land. The petitioner is interpreting the averments in the plaint to the effect that the respondents are seeking possession of 75 sq.ft. of land. The said interpretation cannot be considered in the application for rejection of plaint filed under Order VII Rule 11 of C.P.C. Taking into consideration the averments in the plaint as correct, the Court has to see that whether the suit is under valued or plaint does not disclose cause of action. The respondents in paragraph 7 of the plaint have disclosed cause of action for the suit. The learned Judge considering the provisions of Order VII Rule 11 of C.P.C. and the grounds on which the petitioner is seeking rejection of plaint, held that the petitioner failed to prove his case that plaint is under valued and plaint does not disclose cause of action and rightly dismissed the I.A. by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

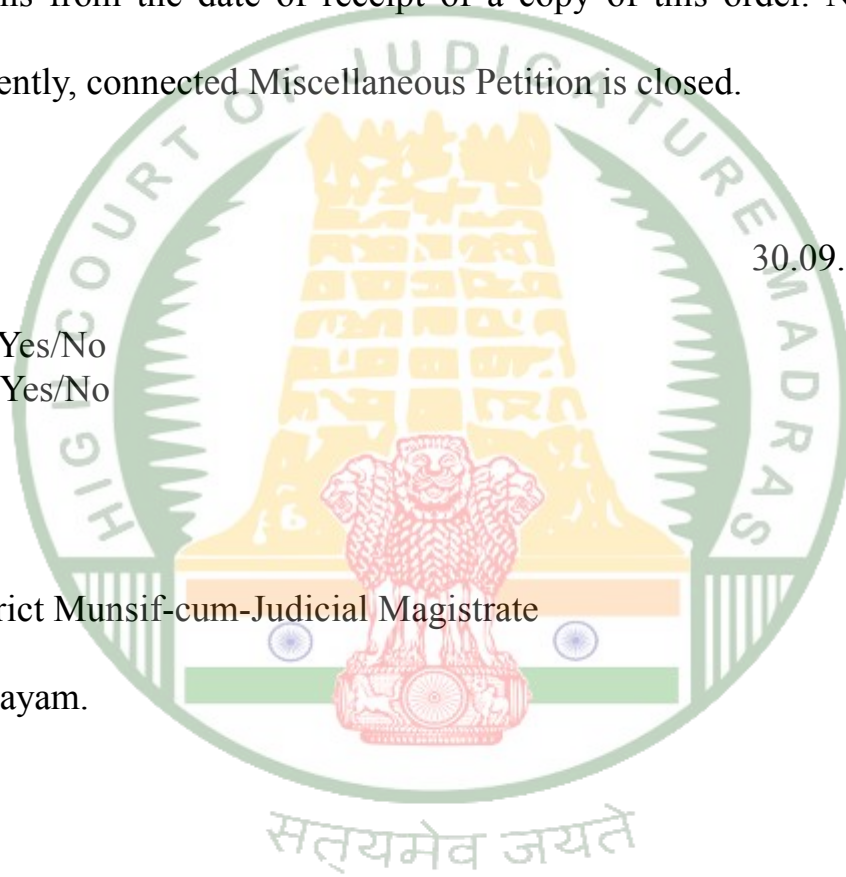
10.For the above reasons, the Civil Revision Petition stands dismissed. The suit is of the year 2016 and the learned Judge is directed to dispose of the suit as expeditiously as possible, in any event, within six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

30.09.2021

Index : Yes/No
Internet: Yes/No
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To

The District Munsif-cum-Judicial Magistrate
Mettupalayam.

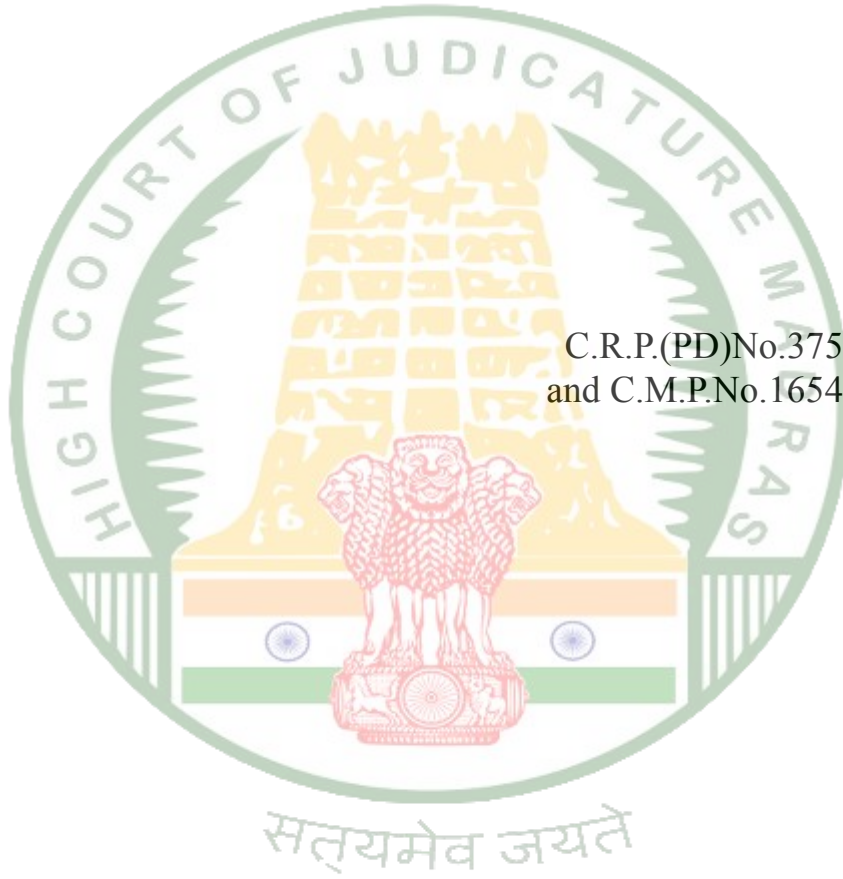


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