

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP(PD).No.505 of 2017

and

CMP.No.2508 of 2017

R.Balasubramanian

... Petitioner

Vs.

1. R.Sridhar

2. Ruby Manoharan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.1181 of 2016 in O.S.No.253 of 2010 dated 03.01.2017 passed by the learned District Munsif Court, Tambaram.

For Petitioner : Mr.B.Thirumalai

For Respondents : Mr.J.John Bosco (for R1)

: Mr.V.Premkumar for

Mr.R.Sankarakutralingam (for R2)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.1181 of 2016 in O.S.No.253 of 2010 dated 03.01.2017 on the file of the learned District Munsif, Tambaram, thereby, dismissing the petition seeking amendment of plaint.

2. The petitioner is the plaintiff and the respondents are the defendants. Initially, the petitioner filed a suit for bare injunction in respect of the suit property. On receipt of the summons, the second respondent filed a written statement stating that the second respondent had already completed construction as per the power given by the first respondent herein and the petitioner was physically present during the construction of flats upon the first respondent's property and the construction of compound wall. Thereafter, the petitioner failed to appear before the trial Court and as such, the suit itself was dismissed for default on 28.02.2011. Immediately, on 14.03.2011, the petitioner filed a petition to restore the suit and also seeking amendment to include the prayer of demolition of compound wall put up by the second respondent herein. The trial Court allowed the petition for restoration and restored the suit. When the suit was posted for

defendants' side arguments, the petitioner filed a memo that the amendment petition is pending without even numbering.

3. On a perusal of records, it reveals that while filing the petition to restore the suit, the petitioner also filed a petition to amend the prayer. The trial Court without ordering the amendment petition proceeded with the trial. After filing the memo, the Court below had taken the application seeking amendment and dismissed the same on the ground that at the time of filing the petition for amendment D.W.1 was not cross examined. Even then, the petitioner stated that the second respondent herein had put up compound wall in the suit property.

4. On a perusal of the written statement, it reveals that the second respondent categorically stated that he had completed the construction as per the power given by the first respondent herein as well as the petitioner was physically present during the construction of flats upon the first respondent's property and the construction of compound wall. On the basis of the written statement, the petitioner filed a petition seeking amendment to include the prayer of demolition of compound wall. Therefore, the order

passed by the Court below is perverse and illegal and it is liable to set aside.

5. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.1181 of 2016 in O.S.No.253 of 2010 dated 03.01.2017 is hereby set aside. After amendment, the respondents are permitted to file their additional written statement and thereafter, the trial Court is directed to dispose of the suit within a period of six months. Consequently, the connected Miscellaneous Petition is closed. No costs.

29.03.2021

Speaking/Non-speaking order

Index : Yes/No

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To

1. The District Munsif Judge, Tambaram.

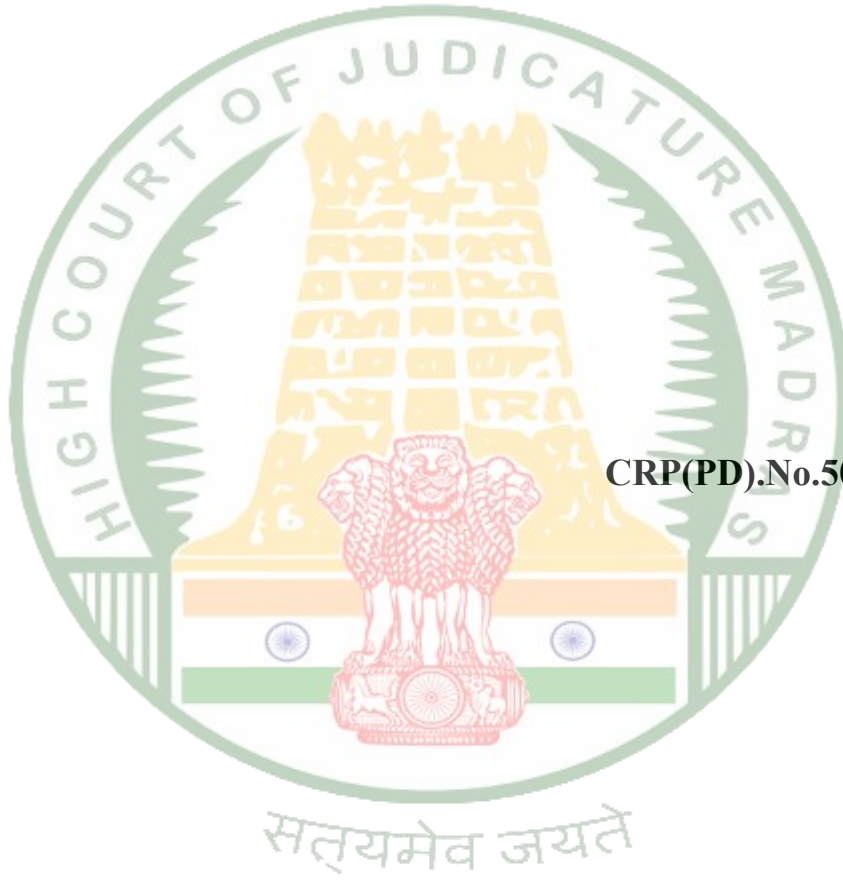
2. The Section Officer,

V.R.Section, High Court of Madras.

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G.K.ILANTHIRAIYAN,J.

Kv



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