

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD)No.1295 of 2018

and

CMP.No.6695 of 2018

1.Tamilarasi @ Kuppulakshmi

2.Jothi Arumughan

.. Petitioners

Vs.

Prabhu

.. Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and Decretal order dated 19.02.2018 made in I.A.No.723 of 2016 in O.S.No.7 of 2013 on the file of the First Additional District Munsif Court, Erode (Second Additional District Munsif Court, Full Additional Charge, Erode).

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For Petitioner : Mr.N.Manokaran

For Respondent : M/s.S.Kaithamalaikumaran

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned First Additional District Munsif Court, Erode in I.A.No.723 of 2016 in O.S.No.7 of 2013 dated 19.02.2018.

2. The defendants in O.S.No.7 of 2013 on the file of the First Additional District Munsif Court, Erode, are the revision petitioners herein.

3. According to the petitioners, the respondent herein has filed a suit in O.S.No.7 of 2013 seeking permanent injunction. The revision petitioners have filed the written statement in the year 2013 in which, it is stated that the respondents have constructed a house and continuing the possession of the suit property. The respondent has filed an application in I.A.No.723 of 2016 to permit the petitioner to amend the plaint and the same was allowed on cost. Challenging the said order, the revision petitioners have filed the present civil revision petition before this Court.

4. The learned counsel for the petitioners would submit that the suit was filed on 24.09.2012 and the amendment petition has been filed after the suit claim was barred by limitation as on the date of filing the application for

amendment. The Hon'ble Supreme Court time and again held that if any application for amendment is filed for time barred claim the same has to be dismissed as if the fresh suit as on the date of filing the amendment petition is barred by limitation. Hence, the impugned order is liable to be set aside.

5. Per contra, the learned counsel appearing for the respondent would submit that the written statement has been filed in the year 2013, wherein it is stated that the revision petitioners have constructed a house and continuing the possession of the suit property. Since the revision petitioners attempted to interfere with his possession of the suit properties and the revision petitioners filed the suit against him and his father in O.S.No.306 of 2012 claiming injunction in respect of R.S.No.266/4 and 5 and as well as R.S.No.266/2010 and the revision petitioners without any manner of right purposely set up the title over his property and disputing his right, in order to safeguard his right alone the respondent had filed the application for amendment.

6. Heard the learned counsel for both sides and perused the materials available on record.

7. On a perusal of the records, it is not in dispute that the respondent herein filed the suit against the petitioners in O.S.No.7 of 2013 claiming injunction in respect of R.S.No.266/4 and 5 as well as R.S.No.266 of 2010 and during the pendency of the suit, the respondent/plaintiff filed an application to amend the prayer in the plaint for declaration. Since the petitioners disputed the title of the respondent in their written statement, in order to safeguard his right alone, the respondent has filed the application for amending the relief sought for in the plaint.

8. The question that has to be decided is whether the relief sought for in the plaint for declaration is barred by limitation or not?. The petitioners herein have not clearly stated that date on which they constructed the house and they are in possession. In the absence of the same, this Court cannot decide whether the suit claim sought for in the amendment is time barred by limitation or not. Therefore, the matter has to be agitated before the trial Court.

9. Considering the facts and circumstances of this case, I do not find any reason to interfere with the order passed by the II Additional District Munsif Court, Erode in I.A.No.723 of 2016 in O.S.No.7 of 2013 dated

19.02.2018. Hence, the order of the trial Court is hereby confirmed and the Civil Revision Petition is dismissed in the admission stage itself. Consequently, the connected Miscellaneous petition is closed. No costs.

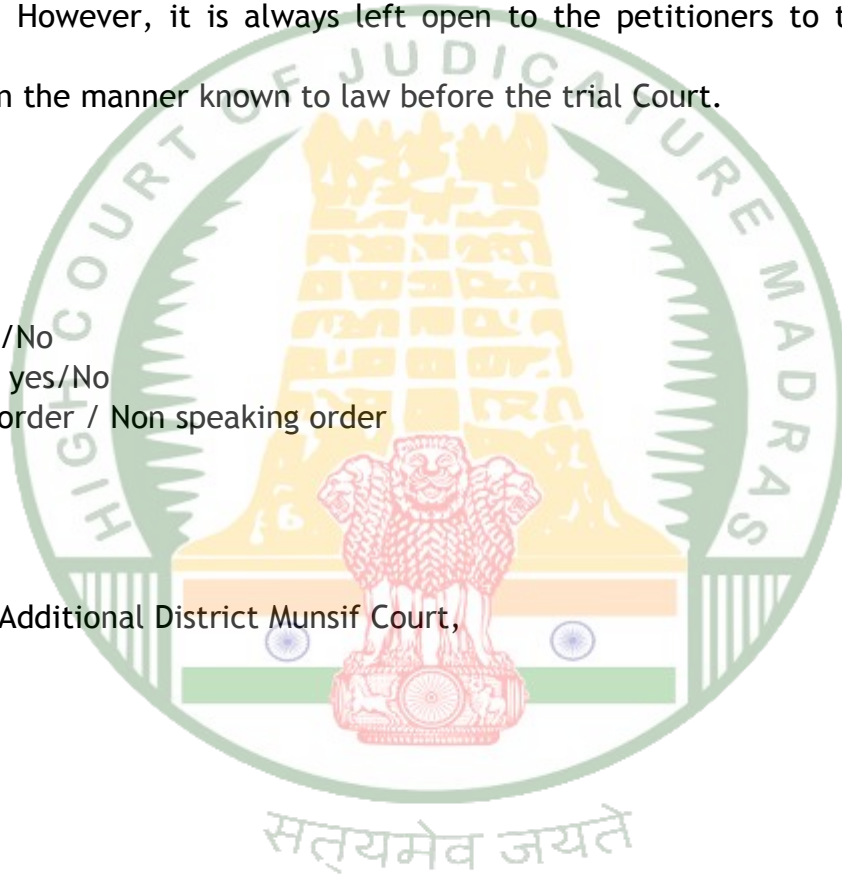
10. However, it is always left open to the petitioners to take all the defence in the manner known to law before the trial Court.

09.04.2018

Index:Yes/No
Internet : yes/No
Speaking order / Non speaking order
kkd

To

The First Additional District Munsif Court,
Erode.



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P.VELMURUGAN,J.

kkd



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