

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (PD) No.268 of 2018

V.J.P.S. Trust,
Rep. by its
Managing Trustee
Mr.T.R.Sagadevan
S/o.Mr.Ramasamy,
No.9,T.N.H.B. Shopping Complex,
First Avenue,
Sastri Nagar, Adyar,
Chennai 600 020.

.. Petitioner

vs

N.Raman

.. Respondent

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 22.11.2017 passed in I.A.No.14003 of 2017 in O.S.No.4514 of 2017 by the VII Additional District Judge, Chennai.

For Petitioner

... Mr.S.Sathishkumar

For respondent

... Mr.G.Padmanapan

ORDER

The Civil Revision Petition has been filed to set aside the order dated 22.11.2017 passed in I.A.No.14003 of 2017 in O.S.No.4514 of 2017 by the learned VII Additional District Judge, Chennai.

2.According to the petitioner/plaintiff, the petitioner has filed a suit in O.S.No.4514 of 2017 against the respondent/defendant under Order VII Rule I of CPC seeking declaration and permanent injunction. In the said suit, the petitioner has filed an application in I.A.No.11560 of 2017 under Order 39 Rules 1 and 2 of CPC for granting interim injunction restraining the respondent/defendant from interfering with the peaceful possession and enjoyment of the suit schedule properties. Thereafter, the petitioner has filed an application in I.A.No.14003 of 2017 in O.S.No.4514 of 2017 under Order 6 Rule 17 of CPC to amend the plaint and the same was dismissed on 22.11.2017. Aggrieved by the said order, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioner submitted that the Court below, erroneously dismissed the application filed to amend the plaint on the ground that the amendment sought for by the petitioner alters the nature of the suit. Hence, the learned counsel seeks permission of

this Court to amend the plaint by inserting paragraph No.4 (a) and prayer column No.7 as (a) to declare the plaintiff is sole and absolute owner of the property morefully described in the schedule on the basis of the amounts settled to the defendant as per the deed of composition instead of prayer found in the plaint prayer column No.7(a) in the affidavit filed in support of I.A.No.14003 of 2017 in O.S.No.4514 of 2017.

4.The learned counsel for the respondent has no objection in allowing the application, filed to amend the plaint.

5.On perusal of the order, it is seen that the trial Court dismissed the amendment application holding that the petitioner relied on the unregistered document, contrary to the prior prayer of declaring the rights on the basis of an oral gift and if the amendment application is allowed, it will alter the nature of the suit.

6.In an identical case, the Hon'ble Supreme Court held that the amendment application can be allowed at the pre-trial stage, unless it will change the nature and character of the suit.

7. In the present case, it is seen that, there is no objection by the respondent in allowing the application and if the amendment application is allowed, it will not change the nature and character of the suit.

8. Considering the facts and circumstances of the case, submission made by the learned counsel for both sides and since no prejudice would be caused to the rights of the respondent, this Court is inclined to allow the application by giving liberty to the respondent to raise all the objections before the Court below at the time of trial or at the time of marking of documents in the said suit and pass the following order:

"(i) The order dated 22.11.2017 passed in I.A.No.14003 of 2017 in O.S.No.4145 of 2017 by the learned VII Additional Judge, City Civil Court is set aside.

(ii) The respondent/defendant is permitted to raise all his objections before the Court below at the time of trial or at the time of marking of documents in O.S.No.4145 of 2017."

The Civil Revision Petition stands allowed with the above observations. No costs."

26.03.2018

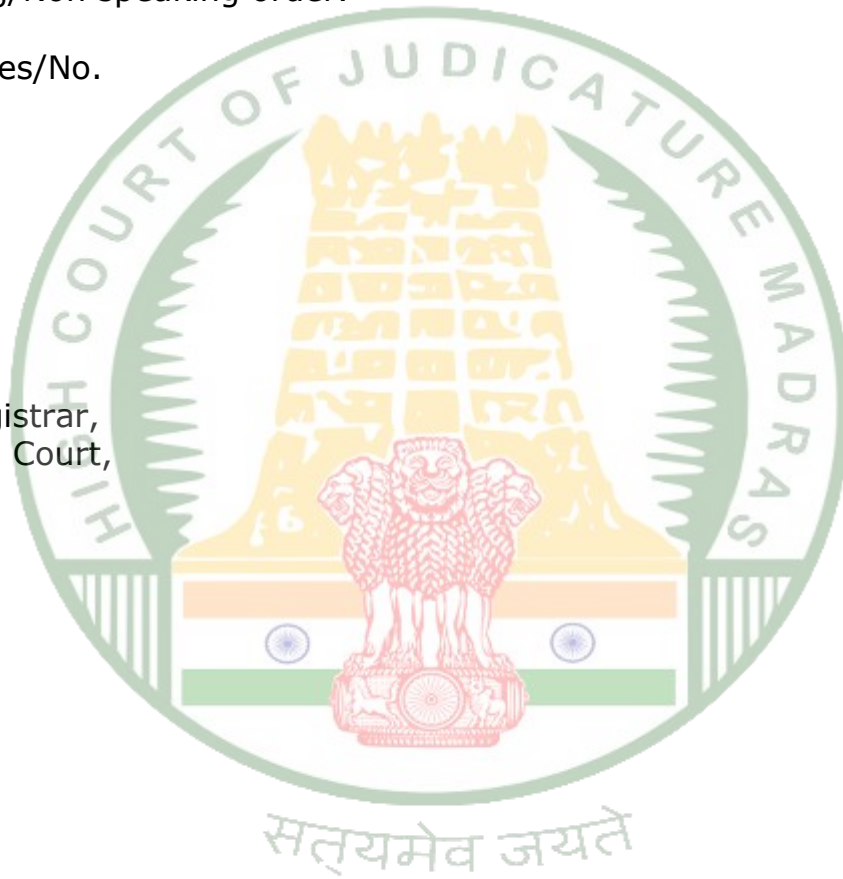
Speaking/Non speaking order.

Index: Yes/No.

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To

The Registrar,
City Civil Court,
Chennai.



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D.KRISHNAKUMAR,J.

cla



C.R.P.(PD)No.268 of 2018

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Date: 26.03.2018