

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.3774 of 2013 and
M.P.No.1 of 2013

1. Mrs. C.Sumathy
2. P.V. Chandrasekar

... Petitioners

1. K. Ghanasekar
2. K. Balakrishnan
3. K.Mohanasundaram

... Respondents

सत्यमेव जयते

Civil Revision Petition filed under Article 227 of the Constitution of India,
against the order dated 22.08.2013 made in I.A.No.669 of 2013 in
O.S.No.472 of 2009 on the file of the Additional District Munsif,
Poonamallee.

For Petitioner : Ms. AL. Gandhimathi

For Respondents : Mrs. C.Harini – for R & R2
for Mr.M.K. Murali

R3 - Not Ready in Notice

ORDER

Challenging the fair and final order passed in I.A.No.669 of 2013 in O.S.No.472 of 2009 on the file of the Additional District Munsif Couyt, Poonamallee, the defendants 1 and 2 have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.472 of 2009 for declaration and permanent injunction. The defendants 1 to 3 filed their written statement and are contesting the suit.

3. Subsequently, before the commencement of the trial, the plaintiffs filed an application in I.A. No.669 of 2013, seeking for amendment of the plaint stating that the defendants have constructed a building in the suit property after the filing of the suit and therefore, the

prayer for mandatory injunction and for recovery of possession should be included. Consequent to the amendment in the prayer, the plaintiffs have also sought for amendment of the pleadings with regard to the said reliefs.

4. Earlier, the plaintiffs filed an application in I.A.No.471 of 2012 to amend the plaint incorporating the relief of mandatory injunction directing the defendants 1 and 2 to remove the entire construction put up by them over the suit property. The Trial Court dismissed the application. Aggrieved over the same, plaintiffs filed a Civil Revision Petition in C.R.P.(PD) No.4403 of 2012 and this Court, by order dated 11.12.2012, while dismissing the Civil Revision Petition, observed that to amend the prayer for mandatory injunction directing the defendants to remove the construction, there is no need for a prayer for recovery of possession in respect of the amended relief sought for. Further, this Court observed that in the case on hand, the defendants 1 and 2 put up construction in the suit property and therefore, without a prayer for recovery of possession by valuing the relief for recovery of possession and paying necessary court fee, the relief of mandatory injunction cannot be permitted.

5. After the disposal of the said Civil Revision Petition and before the commencement of the trial, the plaintiffs filed the present application in I.A.No.669 of 2013 seeking for amendment of the plaint prayer as well as the pleadings.

6. Since the plaintiffs have filed the amendment application before the commencement of the trial and that the defendants will have an opportunity to file additional written statement and let in oral and documentary evidences, the petitioners-defendants would not be prejudiced in any manner. The Trial Court, has rightly allowed the application.

7. In such view of the mater, I find no ground to interfere with the order passed by the Trial court. Liberty is given to the petitioners-defendants to file their additional written statement after the amendment of the plaint. The defendants 1 and 2 are directed to file their written statement, within a period of two weeks from the date of filing of the amended plaint before the Trial Court. The Trial court, is directed to

dispose of the suit in O.S.No.472 of 2009, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.09.2019

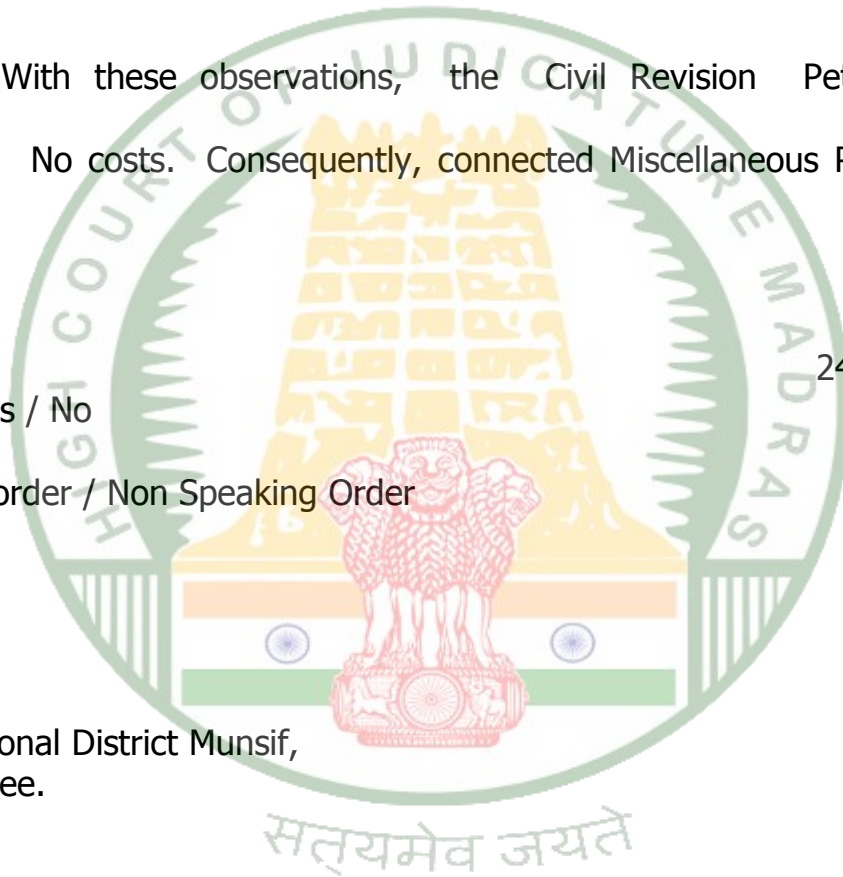
Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

The Additional District Munsif,
Poonamallee.

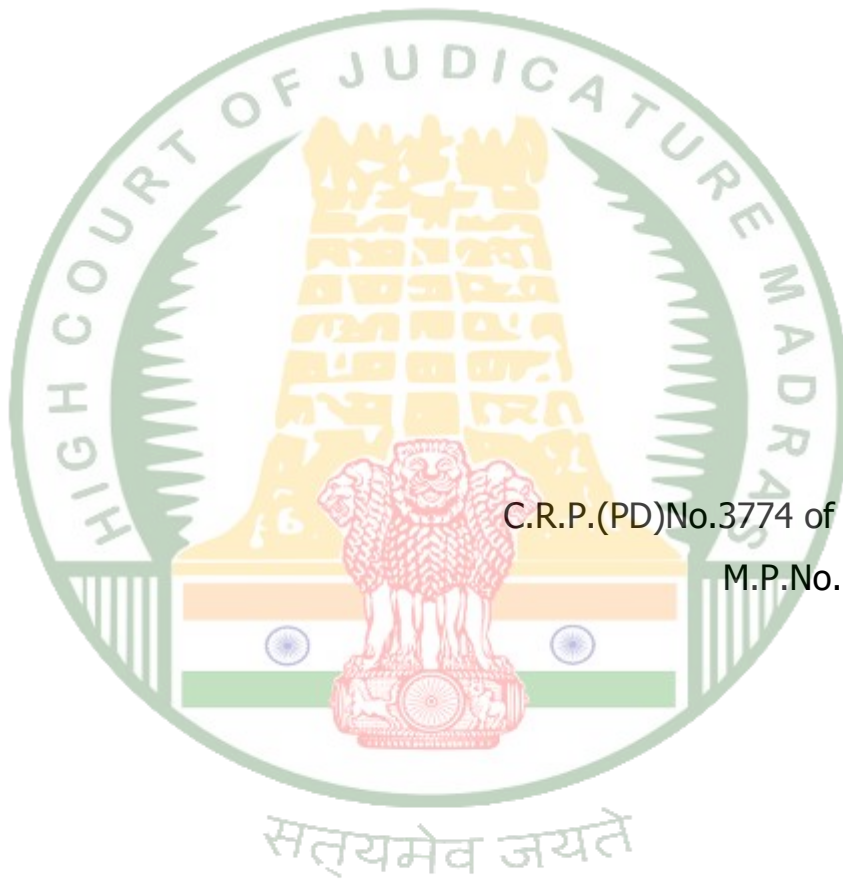


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C.R.P.(PD).No.3774 of 2013

M.DURAIWAMY, J.

Rj



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