

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No.1294 of 2019

and

CMP.No.8445 of 2019

Ganesan

..Petitioner/Plaintiff

Vs

1.M.G.R. (alias) Muthusamy

2.Anbazhagan

3.Parvathy

4.Ilavarasi

..Respondents/Defendants

This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order of the learned District Munsif of Jayankondam, dated 28.01.2019 in I.A.No.1069 of 2018 in O.S.No.226 of 2009.

For Petitioner : Mr.P.Parthi Kannan

ORDER

The above Civil Revision Petition is filed challenging the order passed in I.A.No. 1069 in O.S.No. 26 of 2009, which is a petition filed for amending the schedule of property at the arguments stage.

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The facts in brief are as follows:

The plaintiff had filed the suit for bare injunction with reference to the property, which has been described in the schedule of property as an extent of 50 cents in survey No.459/1 and 2 in Salayur South

Village. When the matter was posted for arguments after recording evidence, the petitioner has come forward with an application to amend the suit and the reasons given is the marking of Ex.B3 by the defendants. The amendment sought to change the survey Number from 459/1,2 to 408/3 and the eastern boundary was also sought to be amended as also the extent of the property. Considering the fact that the amendment was a post trial one and that it was an attempt to introduce a new schedule, the court below has dismissed the said application and challenging the same plaintiff is before this Court.

3 Heard Mr.P.Parthi Kannan, learned counsel appearing on behalf of the revision petitioner.

4 From a perusal of the papers, it is evident that even as early as on 09.01.2009, when the defendant had filed a written statement, they had pointed out the discrepancy, which is once again reiterated by during the defendant's side evidence. Thereafter, when the matter is posted for arguments, the application came to be filed, which is a post trial amendment. Order 6 Rule 7 of the Code of Civil Procedure has undergone an amendment by Act 22 of 2002 and the proviso now clearly stipulates that no amendment after trial shall be allowed unless the court is able to come to the conclusion that despite due diligence of the plaintiff, the party could

not have raised the pleading. In the instant case no such material is available to convince the Court to allow the said application. As already submitted, even as early as in the year 2009, the discrepancy was brought to the notice of the plaintiff. That apart the schedule of property is also undergoing a total change by reason of this amendment. I do not find any infirmity in the order passed by the learned Judge.

5 In the result, the Civil Revision Petition stands dismissed and the order passed in I.A.No.1069 of 2018 in O.S.No. 226 of 2009 by the learned District Munsif of Jayankonadam is confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

04.04.2019

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Index: Yes/No

Internet: Yes/No

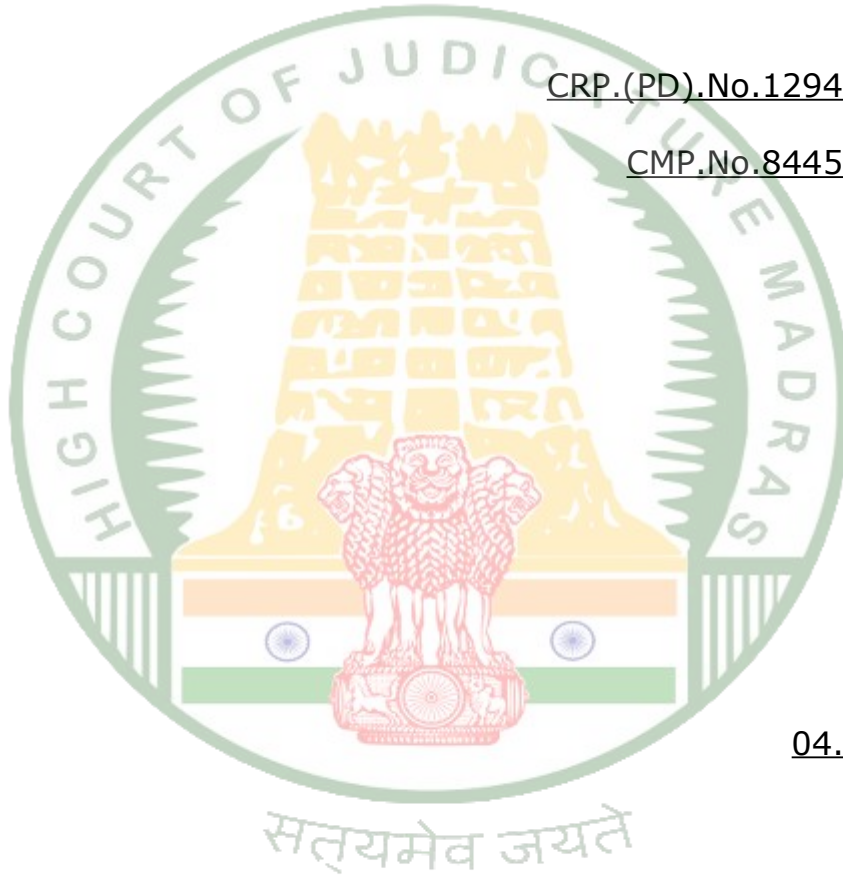
Speaking order / Non-speaking order

To

The District Munsif Court,
Jayankondam.

P.T.ASHA, J.
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