

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.1837 of 2014

and

M.P. No.1 of 2014

S.Nasin Begum

... Petitioner

Vs

1.Shanmugam

2.S.Saravanan

3.S.Shankar

... Respondents

Prayer:Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order of the District Munsif Court at Sankarapuram dated 26.04.2014 in I.A.No.926 of 2013 in O.S.No.247 of 2009.

For Petitioner : Mr.P.Valliappan

For Respondents : No appearance

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 26.04.2014 passed by the learned District Munsif, Sankarapuram in I.A.No.926 of 2013 in O.S.No.247 of 2009.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the plaintiff in the suit O.S.No.247 of 2009. He had originally filed the said suit for a declaration and injunction in respect of ABEF portion of the suit schedule property disclosed in the plan and has also sought for a mandatory injunction for demolishing the superstructure in the CDEF portion in the plan. The respondents are the defendants in the suit and they have also filed their written statement in O.S.No.247 of 2009 and issues were framed by the Trial Court. After commencement of trial, I.A.No.926 of 2013 was filed by the petitioner in O.S.No.247 of 2009 under Order VI Rule 17 of CPC seeking for amendment of the plaint to include the relief of possession in respect of CDEF portion and also for valuation of the suit. The petitioner filed the amendment application seeking to amend the mandatory injunction relief to include the relief of possession and also for amendment of the valuation of the prayer for mandatory injunction as she proposes to seek relief of possession in addition to the mandatory injunction, on the ground that by inadvertence, she had not asked for possession while filing the suit at the inception.

3. A counter was also filed by the respondents/defendants in

I.A.No.926 of 2013 wherein they have stated that no proper reasons have been given by the petitioner for not having filed the amendment application before trial. The Trial Court by its order dated 26.02.2014 dismissed I.A.No.926 of 2013 in O.S.No.247 of 2009, on the ground that the petitioner was not vigilant in filing the amendment application much earlier i.e., even before commencement of trial. Aggrieved by the dismissal of I.A.No.926 of 2013 in O.S.No.247 of 2009, the instant revision has been filed under Article 227 of the Constitution of India.

4. Heard, Mr.P.Valliappan, learned counsel for the petitioner. Despite service of notice on the respondents and the name of the counsel for the first respondent as well as the names of the second and third respondents having been printed in the cause list today, there is no representation on their side.

5. The learned counsel for the petitioner submits that the amendment sought for will not change the character and nature of the suit and therefore, the Trial Court ought to have allowed the application. He further submitted that the petitioner had sought for two reliefs in the

suit viz., the suit for declaration and injunction in respect of ABEF portion in the plan of the suit schedule property and for mandatory injunction in respect of CDEF portion. According to him, by inadvertence, the relief of possession was not sought for at the time of filing of the suit which necessitated the petitioner to file the amendment application under Order VI Rule 17 of CPC to include the relief of possession as well as for valuation of the property for the purpose of seeking the relief of possession.

6. The learned counsel for the petitioner further contended that since the suit for possession can be filed within 12 years and the suit having been filed in the year 2007 and the amendment sought for having been filed in the year 2013, the relief sought for in the amendment application is well within the period of limitation.

Discussion:

7. This Court has perused the affidavit filed in support of I.A.No.926 of 2013 in the renumbered O.S.No.247 of 2009 pending on the file of the learned District Munsif, Sankarapuram. Admittedly, even at

the time of filing of the suit O.S.No.861 of 2007 before the learned District Munsif, Sankarapuram, the respondents were in possession of the property marked as CDEF portion in the plan, for which, the relief of mandatory injunction was sought for by the petitioner.

8. This Court has also perused the plaint filed in support of the suit wherein they have stated that the respondents have encroached upon the CDEF portion. However, in the relief sought for in the plaint, they have not sought for possession, but only sought for relief of mandatory injunction directing the respondents to demolish the superstructure illegally put up by them

9. The amendment sought for in I.A.No.926 of 2013 in O.S.No.247 of 2009 is an innocuous one as it has been the consistent stand of the petitioner, as seen from the plaint averments that the respondents have encroached upon the CDEF portion in the suit schedule property. She has also averred in her affidavit filed in support of amendment application that only due to inadvertence, the relief of possession was not sought for when the plaint was originally filed. Being

an innocuous prayer and the petitioner having shown bonafides for not having filed the amendment application before trial, the Trial Court ought to have allowed I.A.No.926 of 2013 in O.S.No.247 of 2009 as allowing of the amendment application will consequently result in the effective adjudication of the dispute between the parties.

Conclusion:

10. For the foregoing reasons, the order dated 26.02.2014 passed by the learned District Munsif, Sankarapuram, in I.A.No.926 of 2013 in O.S.No.247 of 2009 is hereby set aside and the amendment sought for I.A.No.926 of 2013 in O.S.No.247 of 2009 is allowed and the petitioner is directed to carry out the amendment within a period of 3 weeks from the date of receipt of a copy of this Order and thereafter, the Trial Court shall continue with the proceedings.

11. Considering the long pendency of the suit, this Court directs the Trial Court to dispose of the suit within a period of six months, after amendment is carried out by the petitioner.

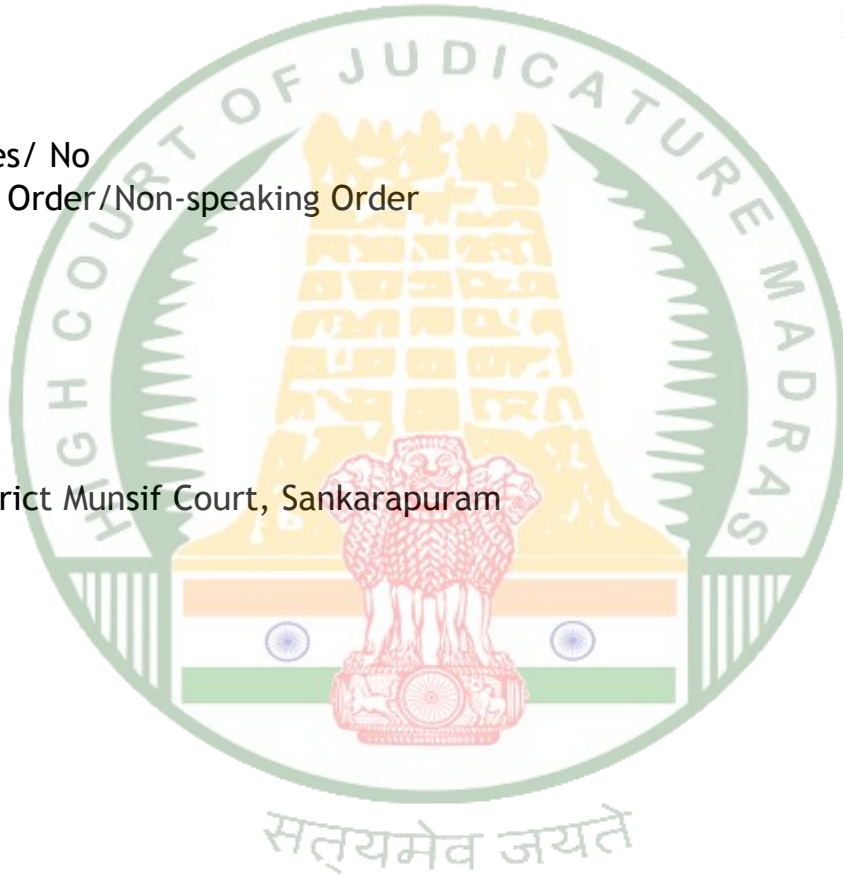
12. With the aforesaid direction, the Civil Revision Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

24.06.2019

Index: Yes/ No
Speaking Order/Non-speaking Order

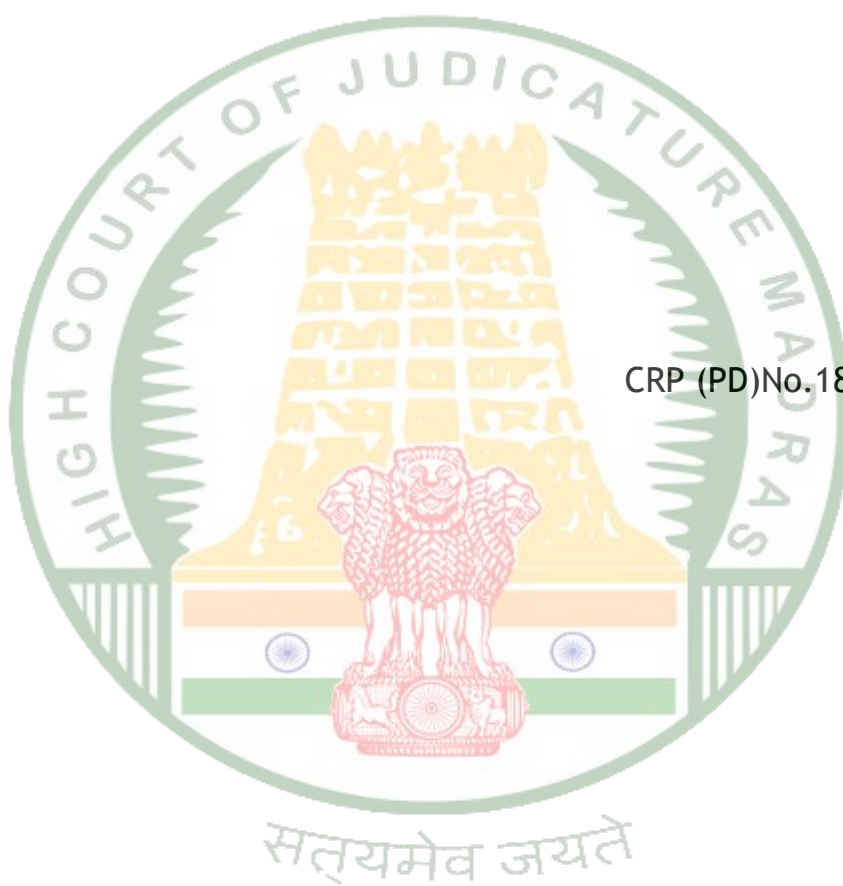
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To
The District Munsif Court, Sankarapuram



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ABDUL QUDDHOSE, J.



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