

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P.No.1905 of 2014
and M.P.No.1 of 2014

Durai

... Petitioner

Vs.

1.P.Suresh

2.The District Collector,
Tiruvallur District.

3.The Special Tahsildar,

Adi Dravida Welfare, Tiruvallur District. ... Respondents

Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 06.03.2014 passed by the District Munsif Court, Tiruvallur, Kanchipuram District dismissing the I.A.No.80 of 2014 in O.S.No.166 of 2009.

For Petitioner : Mr.N.Nagu Sah

For Respondents : Mr.Dev Narendran,
Government Advocate (CS) (R2 & R3)
R1 - no appearance

O R D E R

Challenging the fair and final order passed in I.A.No.80 of 2014 in O.S.No.166 of 2009 on the file of the District Munsif Court, Tiruvallur, the 3rd defendant has filed the above Civil Revision Petition.

2.The 1st respondent/plaintiff filed the suit in O.S.No.166 of 2009 to declare the Sale Deed dated 28.06.1989 as null and void, for recovery of possession of the suit property as vacant site, permanent injunction, mandatory injunction and for other reliefs.

3.The 3rd defendant in his written statement, while making other averments, has also stated that the plaintiff's father Paneerselvam had continued his possession upto January 1995 and handed over possession of the property to the 3rd defendant prior to his death. After the filing of the written statement in January 2010, the 3rd defendant took out an application in January 2014 in I.A.No.80 of 2014 to amend the written

statement by deleting the averment that the plaintiff's father Paneerselvam had continued his possession upto January 1995 and handed over possession of the property to him prior to his death by substituting that the said Paneerselvam had handed over the possession of the suit land to the 3rd defendant even at the time of execution and registration of the Sale Deed on 28.06.1989 made in his favour and since the 3rd defendant is in absolute possession and enjoyment of the suit land as its absolute owner by exercising all rights of ownership over it by constructing a superstructure therein. The 3rd defendant also sought to include a new paragraph in the written statement. The application filed by the 3rd defendant was opposed by the plaintiff stating that the new averments are after-thought. Further, the admission made by the 3rd defendant in the written statement cannot be deleted after a period of four years. The trial Court, taking into consideration the case of both parties, dismissed the application.

4. Admittedly, the amendment application was filed by the 3rd defendant after the commencement of the trial. When the plaintiff's side witnesses were examined and after the completion of the evidence of D.W.1 and when the suit was posted for further evidence of the defendants, the 3rd defendant has filed the application seeking for amendment of the written statement. In the written statement, the 3rd defendant has stated that the plaintiff's father was in possession of the property till January 1995. Now, by way of amendment, he seeks to delete the said averment and introduce a new case stating that he was put in possession on the date of execution of the Sale Deed. When the defendant had made some admission in the written statement, it cannot be very lightly allowed to be amended. Based on the available pleadings, the parties entered the box and let in evidence. When the written statement was filed in the year 2010, after a lapse of 4 years, the present application has been filed by the 3rd defendant seeking for amendment of the written statement. The admission made by the 3rd defendant cannot be allowed to be amended at this stage. If the amendment is allowed, it would cause prejudice to the plaintiff. Taking into consideration all these aspects, the trial Court has rightly dismissed the application. I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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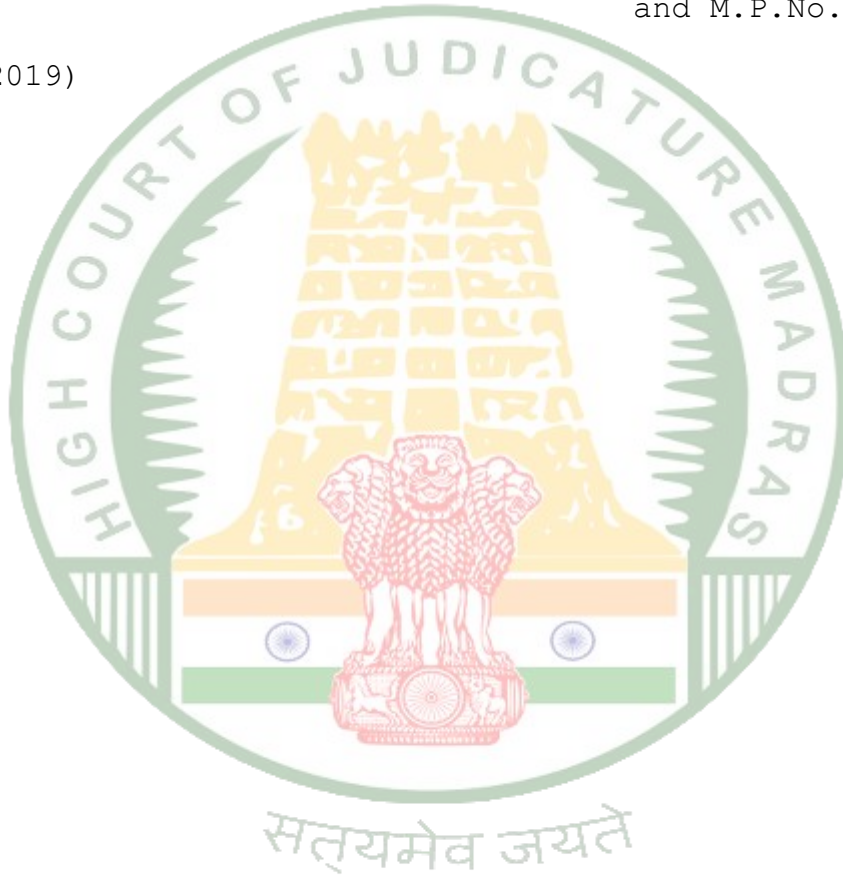
To

The District Munsif ,
Tiruvallur, Kanchipuram District.

+1cc to Mr.N.Nagu Sah, Advocate SR.93406
+1cc to Spl Government Pleder SR.93146

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VGII (CO)
CB (04/12/2019)



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