

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.4802 of 2014

1. Devaraj
2. Nagavel
Chandran
3. Valliammal
4. D. Venkatesan

.... Petitioners

Vs

1. S.N. Dharman
2. S.R. Arumugam
3. M. Natesan
4. Elumalai
5. Dayalan

.... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 30.06.2014 passed in I.A. No.116 of 2014 in O.S. No.492 of 1995 by the Additional District Munsif Court, Kancheepuram.

For Petitioners

: Mr.S.D.S.Philip

For Respondents

: Mr.V.K. Rajagopalan

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 30.06.2014 passed by the learned Additional District Munsif, Kancheepuram in I.A. No.116 of 2014 in O.S. No.492 of 1995.

Brief facts leading to the filing of the instant Civil Revision Petition filed under Article 227 of the Constitution of India

2. The petitioners are the defendants 2, 3, 5 to 7 in the suit O.S. No.492 of 1995 pending on the file of the Additional District Munsif Court, Kancheepuram. The said suit was filed by the respondents 1 to 3 against the defendants originally for the grant of permanent injunction restraining the defendants 1 to 3 from interfering with their peaceful possession and enjoyment of the suit schedule property. Earlier, the suit was dismissed against which, the plaintiffs filed the first appeal, which was also dismissed and thereafter, the plaintiffs, who are respondents 1 to 3 filed the Second Appeal in S.A. No.364 of 2005 before this Court and by judgment dated 26.09.2012 in S.A. No.364 of 2005, this Court remanded the matter back to the Trial Court for fresh consideration and the operative portion of the directions given by this Court vide its judgment are as follows :

"31. The Trial Court shall do well to see that the plaintiffs

are given opportunity to amend the plaint incorporating the prayer for declaration and also for adding the necessary parties; whereupon opportunity should be given to file written statement as well as additional written statement as the case may be to the respective parties. Additional issues also shall be framed relating to title. Due opportunity shall be given to the defendants to get marked the said 'Kooral Cheettu', subject to whatever objection that might emerge from the other side. Whereupon the Court has to analyse the importance that could be attached to the 'Kooral Cheettu' and also it has to be seen as to whether it was acted upon or not and ultimately, a reasoned judgement should be rendered by the trial Court."

3. Pursuant to the above referred judgment, dated 26.09.2012 passed by this Court in S.A. No.364 of 2005, the plaintiffs have also amended the prayer in the suit O.S. No.492 of 1995 by incorporating the relief of declaration in respect of the suit schedule property. When the matter was posted for arguments, the plaintiffs viz., respondents 1 to 3 filed I.A No.116 of 2014 under Order 7 Rule 14(3) read with 151 CPC to condone the delay in filing the following documents :

- a) Koorchit dated 23.04.1986 entered into between Armugam Naicker and his sons and others
- b) Patta No.235, dated 11.10.2010 standing in the name of Dharman
- c) UDR patta No.717 in the name of Dharman

4. The reasons for the delay in filing the aforementioned documents given by the respondents 1 to 3/plaintiffs are that according to them, the delay was neither wilful nor wanton and further they have stated that no prejudice would be caused to the petitioners for condoning the delay.

5. A counter affidavit was also filed by the petitioners in I.A. No.116 of 2014 filed by the respondents 1 to 3 / plaintiffs to receive the additional documents, wherein, they have alleged that without any pleadings in the plaint, the respondents 1 to 3 / plaintiffs cannot rely upon the documents which they have sought to receive the same as Additional documents.

6. By order dated 30.06.2014, I.A. No.116 of 2014, the learned Additional District Munsif, Kancheepuram allowed I.A. No.116 of 2014 filed in O.S. No.492 of 1995, condoned the delay and permitted the receipt of the documents sought to be marked by the respondents 1 to 3 in the suit. Aggrieved by the allowing of I.A. No.116 of 2014 in O.S. No.492 of 2005, the instant Civil Revision Petition has been filed by the defendants 2, 3, 5 to 7 under Article 227 of the Constitution of India.

7. Heard Mr.S.D.S. Philip, learned counsel for the petitioner and Mr.V.K. Rajagopalan for the first respondent.

8. As seen from the judgment dated 26.09.2012 passed by this Court in S.A. No.364 of 2005, the petitioners, who are some of the defendants in the suit have contended that there is a Koorchit between the family members and therefore, the respondents 1 to 3 / plaintiffs cannot have exclusive ownership of the suit schedule property. Only on this contention, this Court in its judgment dated 26.09.2012 passed in S.A. No.364 of 2005 has remanded the matter back to the Trial Court for fresh consideration. Subsequent to the said order of remand, it is an admitted fact that the respondents 1 to 3 have also amended the plaint and Additional Written Statement has also been filed by the petitioners / defendants 2, 3, 5 to 7.

9. The only submission made by the learned counsel for the petitioners, before this Court is that without there being any pleadings, the Koorchit and other documents, which the respondents 1 to 3 / plaintiffs are seeking to mark as Exhibits, cannot be received by the Court.

10. During the course of arguments, this Court orally directed the learned counsel for the petitioners to produce the Koorchit, which the petitioners/ defendants 2, 3, 5 to 7 have relied upon. But for this oral direction, the learned counsel for the petitioners sought time to produce the same. The documents sought to be marked by the respondents 1 to 3 / plaintiffs in I.A. No.116 of 2014 includes the Koorchit as well as two pattas.

11. This Court has also perused and examined the impugned order. The objections raised by the petitioners which were raised before this Court were duly considered by the Trial Court under the impugned order. The Trial Court has rightly observed that opportunity should be given to both the parties to file documents in support of their respective claims. The Trial Court has also observed under the impugned order that documents Nos.2 and 3 are original pattas and whether the documents sought to be marked by the respondents 1 to 3 as Exhibits in I.A. No.116 of 2014 are genuine, valid and relevant is a matter to be decided only after the Trial.

12. The Trial Court allowed I.A. No.116 of 2014 on condition that the respondents 1 to 3 / plaintiffs pay the costs of Rs.500/- to the contesting respondents on or before 3.7.2014. It is represented by the learned counsel for the respondents 1 to 3 that the said costs were deposited to the credit of the suit, since it was refused to be received by the petitioners which is also admitted by the learned counsel for the petitioners. As seen from the averments contained in the plaint, the respondents 1 to 3 claim absolute ownership, which is disputed by the petitioners as well as other defendants in the suit. According to them, they also have a share in the suit schedule property. This being the case, and that too when the petitioners have been permitted to file documentary evidence including the Koorchit, which they rely upon, the respondents Nos.1 to 3 also should be given similar opportunity to produce all documentary evidence in support of their case. Hence, the Trial Court has rightly allowed I.A. No.116 of 2014.

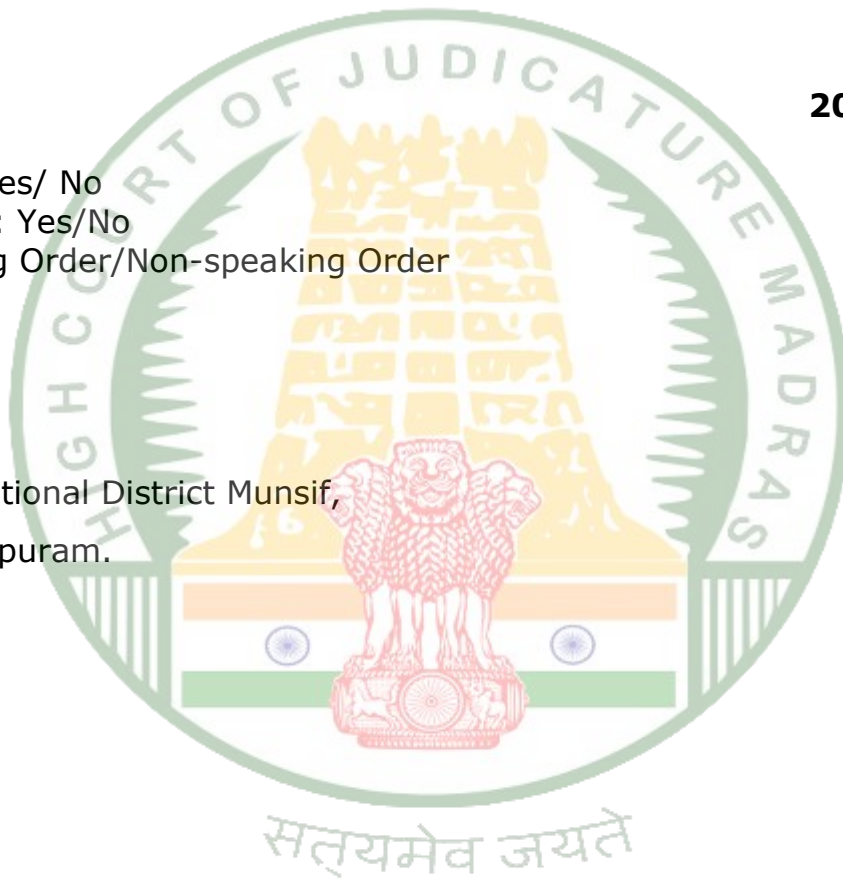
13. For the foregoing reasons, this Court does not find any infirmity in the impugned order passed by the Trial Court and there is no merit in the Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. No costs.

14. In view of the long pendency of the suit, this Court directs the Trial Court to dispose of the suit, within a period of six months from the date of receipt of a copy of this order.

20.08.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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To
The Additional District Munsif,
Kancheepuram.

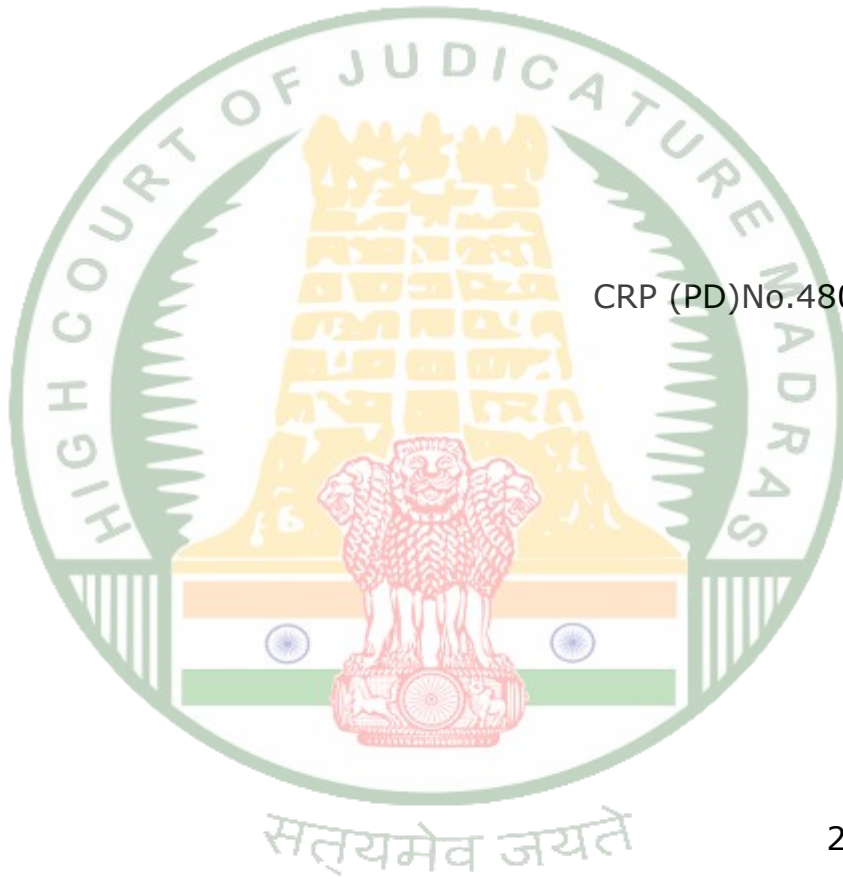


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ABDUL QUDDHOSE, J.

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