

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD).No.2869 of 2019 and  
C.M.P.No.18727 of 2019

K.Durgambal (Died)

1.A.K.Nagooran  
2.Indiraniammal  
3.Pattu  
4.Palayam

... Petitioners

Vs.

Ganesh Maniyan

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India as against the fair and decretal order dated 26.03.2019 in I.A.No.1 of 2019 in O.S.No.176 of 2015 on the file of the Principal District Judge, Chengalpattu.

For Petitioners : Mr.M.Thangadurai

For Respondent : Mr.G.V.Sridharan

**ORDER**

This civil revision petition has been heard with arguments of both sides. As the respondent entered appearance as Caveator, accordingly, the civil revision petition is disposed of at the admission stage.

2.This revision has been filed against the fair and decretal order passed by the Principal District Judge, Chengalpattu dated 26.03.2019 in I.A.No.1 of 2019 in O.S.No.176 of 2015.

3.In the said Interlocutory Application, the revision petitioners have sought for permission of the Court to file additional written statement on two specific grounds to be raised. The first ground to be urged by the petitioners before the trial Court was that, in the present suit which was filed for specific performance, before which the plaintiff/ respondent herein has already filed a suit in O.S.No.41 of 2014 before the District Munsif Court, Alandur where he sought for a bare injunction without getting any leave thereto reserved his right to agitate the issue on specific performance, since earlier suit has been filed, the subsequent suit, i.e., it is a fatal to the present suit and also the other ground that, the suit has been laid only by the partner of M/s.Vijay Associates. It is a Partnership Firm. But, according to the revision petitioners, it is an unregistered one. These two grounds ought to have been urged by the revision petitioners who is the defendants before the trial Court, had inadvertently not urged and

therefore, in order to raise those two grounds by filing of additional written statement, the present interlocutory application was filed, which was rejected by the trial Court through the impugned order.

4.The learned counsel appearing for the petitioners in support of his contention relied upon two decisions of this Court **(i) 1999 (III) CTC 52 [Subramanian and three others V. Jayaraman]; (ii) 2007-I-L.W. 429 [Thiyagarajan V. Manivannan]**. By relying upon the above decisions, the learned counsel for the petitioners submitted that, a lenient view has to be taken by the Court in entertaining subsequent pleadings by way of Order 8 Rule 9 of C.P.C. and such a liberal construction since has been urged by the Courts of Law, especially in the said two decisions where a similarly placed defendants had been permitted to raise the additional grounds by way of additional written statement. Adopting the same analogy, the learned counsel appearing for the petitioners urged that this revision also has to be allowed.

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5.The learned counsel for the petitioners also submitted that, in order to appreciate the two grounds going to be urged by the revision

petitioners, no fresh evidence to be let in and only based on the arguments to be advanced by the petitioners side, the trial Court can decide the same and in this regard, since the suit has already reached the stage of argument, a time frame can be fixed by the trial Court to complete the trial by concluding the arguments and to dispose the suit itself on merits by taking into account of these two additional grounds.

6.However, Mr.G.V.Sridharan, learned counsel appearing for the respondent, who entered appearance through the Caveat, has submitted that the fact that the earlier suit has been filed for bare injunction and also the suit was filed by the partner of the Partnership Firm, which was unregistered, are known factors to the revision petitioners also. However, despite the said fact, the revision petitioners, who were the defendants in the suit, by filing a written statement, does not cover these points and has not raised any of these points and in fact, the defendants/revision petitioners have allowed the trial Court to go on with the trial and trial was completed and during the examination of witness, it was allegedly deposed on behalf of the defendants that the entire sale consideration for the property in question has been paid and the possession of the property has been

handed over to the plaintiff i.e. the respondent herein.

7.After having allowed the trial Court to go on with the trial and after hearing the parties, the matter is posted for arguments, instead of concluding the trial, in order to drag the trial and in order to cover up the fatality of the issue, in view of the evidence let in by the revision petitioners, they filed the present Interlocutory Application which has been rightly rejected by the trial Court as these two grounds since were already available to the revision petitioners, could have been very well raised and non-raising of the two grounds, at the earlier stage, has not been explained and the delay in raising these points at this stage i.e., at the argument stage of the suit is unacceptable and therefore, the reasoning given by the trial Court in rejecting the Interlocutory Application of the revision petitioners is fully justifiable and sustainable and therefore, no interference is required from this Court on the impugned order.

8.I have considered the said submissions of the learned counsel for the parties and it is to be noted that though the two grounds to be urged by the revision petitioners, who are the defendants therein, are already available and no plausible reason has been given in the

affidavit filed in support of the Interlocutory Application before the trial Court and the revision petitioners have not raised these two grounds in the original written statement. It is further to be noted that when the Court examine as to whether the subsequent pleadings can be allowed by way of raising grounds or issues by filing additional written statement under Order 8 Rule 9, a liberal construction shall be made since it is the full discretion of the Court to accept or not to accept such additional grounds by way of additional written statement at any stage of the suit. In view of the language used in the said Order 8 Rule 9, this Court is of the view that, without driving the trial Court to go for taking any further evidence, as agreed upon by the learned counsel for the revision petitioners, the trial Court can be directed to take these two grounds by an additional written statement to be filed by the revision petitioners within a time frame and thereupon straightaway the arguments can be heard from both sides and the suit can be decided within a time frame. If such an arrangement is made, no prejudice would be caused to the parties as the fact remains that these two grounds have not employed or introducing a new case in the suit of the respondent/plaintiff. Therefore, existing factor, if it is brought to the notice of the Court, the same can be taken into account at any

stage of the suit, as that shall be the true and proper interpretation of Order 8 Rule 9 and therefore, for all these reasons and discussions made, this Court is inclined to dispose of the civil revision petition, with the following direction:

That the impugned order in I.A.No.1 of 2019 in O.S.No.176 of 2015 dated 26.03.2019 is hereby set aside and the matter is remitted back to the trial Court by allowing the said I.A. and accordingly, the revision petitioners are permitted to raise additional written statement only urging the two grounds referred to above and such written statement shall be filed within a period of seven days from the date of receipt of a copy of this order and once the additional written statement is filed, based on which, the learned counsel appearing for the parties can be permitted to advance their arguments and thereafter, the matter can be decided by the trial Court within a period of 30 days. Moreover, Order 8 Rule 9 also empowering the Court to allow such petition on terms. Hence, this order is passed allowing this revision on terms of Rs.5000/- and the same shall be paid by the revision

petitioners to the respondent.

9.With this direction, the Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

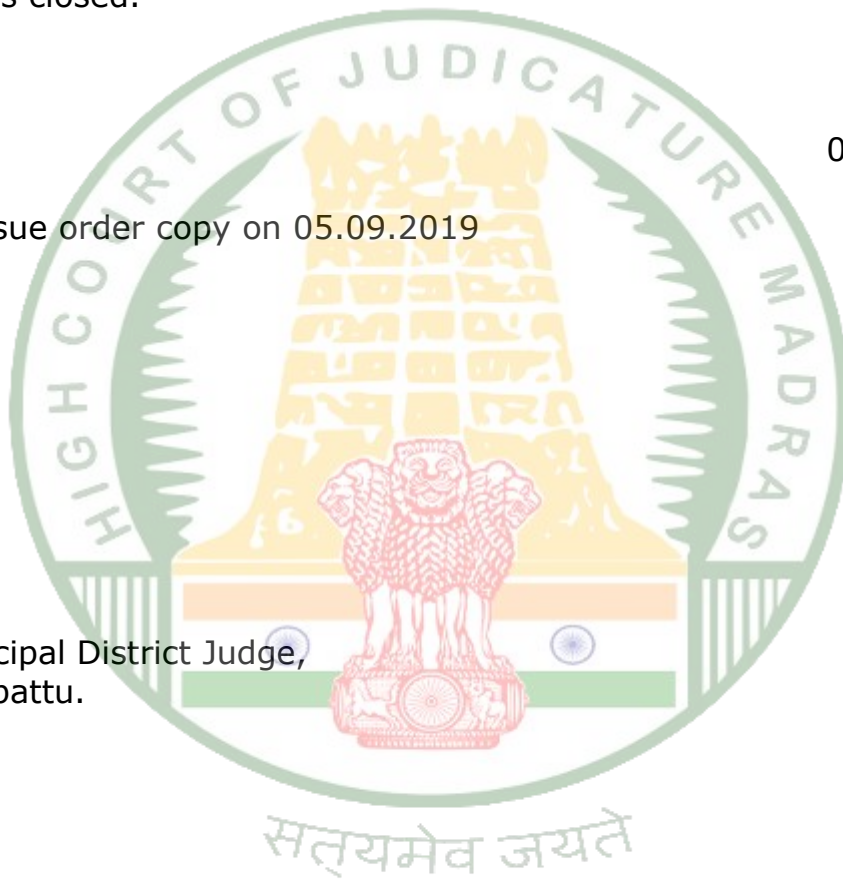
03.09.2019

Note: Issue order copy on 05.09.2019

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To

The Principal District Judge,  
Chengalpattu.

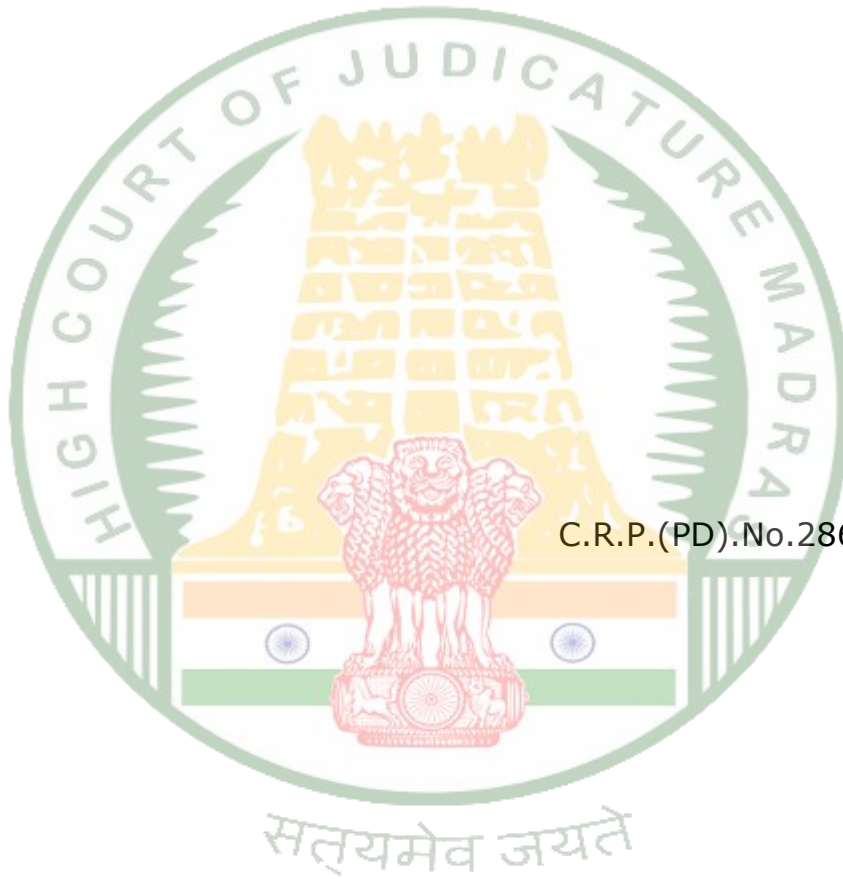


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